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SECOND AMENDED COMPLAINT.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.

CIVIL No. 393-J.

H. T. OVERSTREET, ET AL.,
Plaintiffs,

versus

THE NORTH SHORE CORPORATION, A CORPORATION,
Defendant.

The plaintiffs, T. T. Overstreet, M. E. Nowlin, J. F. Booth, J. A. Lang, Isadore Barnett, R. Brazle, N. Lang, Jr., Omos Harris, N. W. Smith, R. S. Simmons, L. L. Garvin, W. R. Stewart, F. C. Smith and G. A. Pereira, of Duval County, Florida, sue The North Shore Corporation, a corporation, with its principal place of business in Jacksonville, Florida, and allege:

1.

This action arises under the Fair Labor Standards Act of 1938, 52 Stat. 1060, U. S. Code, Title 29, Sections 201-219, as hereinafter more fully appears. Jurisdiction is conferred on this Court by Section 41(8), Title 28, U. S. Code, giving the District Courts jurisdiction "of all suits and proceedings arising under any law regulating commerce".

2.

Defendant, The North Shore Corporation, is a corporation organized and existing under and by virtue of the

laws of the State of Florida. It is the owner and operator of a toll road connecting with U. S. Highway #17, an arterial highway from Jacksonville, Duval County, Florida, to New York City and points north; said toll road operated by the defendant connects U. S. Highway #17 with Fort George Island in Duval County, Florida.

Said toll road is the only means of land communication between Fort George Island and the rest of the United States. It is extensively used by vehicular traffic from points outside the State of Florida to points on said toll road and beyond, and by vehicular traffic from points on said toll road and beyond, to points outside the State of Florida, for hire; that is to say, for a toll or fee. Said road is an integral part of the highway system of the United States.

3.

On Fort George Island there are located two large clubs, the membership consisting mostly of people from states other than the State of Florida who use said toll road in interstate commerce for hire. There is a large winter colony on Fort George Island the residents of which come from states other than the State of Florida, who use said toll road in interstate commerce for hire. On said road, and accessible by land only over said road, are located several fishing camps renting boats and cabins and serving meals, which camps are frequented by the public and used extensively by visitors from Georgia and other nearby states, who use said road in interstate commerce for a toll or fee. The residents and visitors along said road and at Fort George Island receive mail and parcels from other states over said road. The U. S. Post Office uses said road for the purpose of delivering mail from states other than the state of Florida, to visitors and residents

along the road and on Fort George Island and its environs.

Sisters Creek is an integral part of the intercoastal canal from Miami to New York, and said waterway is constantly used in interstate commerce by pleasure craft and freight vessels between Florida and northern states. Defendant as a part of its toll road operates a drawbridge over said intercoastal canal which is constantly raised and lowered to permit passage of boats engaged in interstate commerce, and said drawbridge is an integral part of said toll road. From time to time boats stop at the dock at Sisters Creek Camp to replenish their supplies or have supplies delivered to them from Jacksonville, Florida, and to pick up passengers or discharge passengers.

4.

On said toll road and at New Berlin and at Eastport are located several retail stores or stands which purchase various commodities, including groceries, fuel, liquors, beer, wearing apparel, and other kinds of merchandise for resale to the public. Many of said commodities sold and offered for resale to the public by said stores or stands were and are commodities manufactured or produced in and shipped in interstate commerce from states other than the State of Florida, and some were manufactured and produced and resold to the public by merchants on said toll road in their original packages which were produced in states other than the State of Florida. Said toll road is used in interstate commerce for the delivery of the above stated commodities and others to said merchants, and is the shortest possible route both to Eastport, Florida, and to New Berlin, Florida, and the said road is used for a toll or fee for the delivery of said goods at New Berlin and Eastport over said road, all of which services are performed over the road of the defendant for hire.

5.

Bay Shore Water & Light Company, a corporation, is a subsidiary of The North Shore Corporation, and is owned and controlled by the same interests. It renders certain services in connection with said toll road operated by the parent corporation, The North Shore Corporation. Bay Shore Water & Light Company owns and controls a telephone line connecting with the Southern Bell Telephone & Telegraph Company at Jacksonville, Florida, over which the residents and visitors of Fort George Island and its environs may make and do make long distance calls to all parts of the United States and Europe for hire, which telephone line is operated and maintained by the employees of The North Shore Corporation. The telephone line is a public service, and is used by the public at large for a toll charge. It is also used in interstate commerce by the Western Union Telegraph Company and the Postal Telegraph Company to render telegraphic service to those residing at Fort George Island and its environs. Said toll road and telephone lines, since the effective date of the Fair Labor Standards Act of 1938, to-wit, October 24, 1938, and to the date of the filing of this complaint, have been daily used in interstate commerce as aforesaid. The services rendered by plaintiffs to defendant and to Bay Shore Water & Light Company, are so inter-related and interchangeable that it is impossible completely to separate them, but so far as concerns all plaintiffs in this case rendering service to Bay Shore Water & Light Company up to and including March 31, 1942, their wages were paid solely by the defendant.

6.

Plaintiff J. F. Booth, from the date of the Fair Labor Standards Act until the date of the filing of this complaint,

was employed by The North Shore Corporation as foreman of the maintenance work on said toll road and said telephone line, as more fully set out in Paragraphs 2 and 5 above. He performed the duties of foreman of the maintenance division of both corporations, and his services were essential to the use of said toll road and telephone line in interstate commerce, as more fully set out in Paragraphs 2 and 5 above.

7.

Plaintiffs J. A. Lang, Isadore Barnett, Amos Harris, and N. Lang, Jr., are laborers employed by The North Shore Corporation. Their duties consist of maintenance work on said toll road, that is to say, repairing the roads and bridges which were integral parts of said toll road, and of erecting the telephone lines and poles of Bay Shore Water & Light Company and maintaining and repairing said lines and poles. Their services were essential to the use of said toll road and telephone line in interstate commerce, as more fully set out in Paragraphs 2 and 5 above.

8.

Plaintiff R. Brazle was an employee of The North Shore Corporation engaged in the business of maintaining and repairing said toll road and repairing the bridges which were an integral part of said toll road, and his services were essential to the maintenance and use of said toll road in interstate commerce.

9.

Plaintiffs M. E. Nowlin, N. W. Smith, R. S. Simmons, W. R. Stewart, F. C. Smith and C. A. Pereira were employees of The North Shore Corporation. Their services

and duties consisted of selling tickets to and collecting from vehicles using said toll road in interstate commerce as aforesaid, and their further duties consisted of collecting telephone tolls and making long distance connections with Southern Bell Telephone & Telegraph Company to states other than the State of Florida, and otherwise operating said telephone line of Bay Shore Water & Light Company. Their services were essential to the use of said toll road and telephone line in interstate commerce, as more fully set out in Paragraphs 2 and 5 above.

10.

Plaintiff L. L. Garvin was an employee of The North Shore Corporation engaged in selling toll tickets and collecting toll tickets from vehicles using said toll road in interstate commerce, and his duties were necessary to the use and maintenance of said road in interstate commerce.

11.

The services of all of said plaintiffs were essential to the operation of said toll road, and said toll road and said Bay Shore Water & Light Company were operated in interstate commerce, as more fully appears in the foregoing paragraphs, and said plaintiffs were therefore engaged in interstate commerce.

12.

Plaintiff J. R. Booth was employed, as alleged in Paragraph 6 above, from the effective date of the Fair Labor Standards Act until the date of the filing of this complaint, at a regular weekly wage of $25 a week. Said plaintiff worked at varying times from 54 to 84 hours a week.

13.

Plaintiffs J. A. Lang, Isadore Barnett, N. Lang, Jr., and Amos Harris, were employed, as alleged in Paragraph 7 above, from the effective date of the Fair Labor Standards Act until the date of the filing of this complaint, at a rate from October 24, 1938, until about November 1, 1939, at a regular wage of 25¢ per hour, and from about November 1, 1939 to about April 1, 1941, at a regular wage of 17½¢ an hour; and from about April 1, 1941 to the date of the filing of this complaint at a regular wage of 32¢ an hour. During the years 1938, 1939, 1940, and a part of 1941 said employee worked about 55 hours a week.

14.

Plaintiff N. W. Smith was employed, as alleged in Paragraph 9 above, from the effective date of the Fair Labor Standards Act until the date of the filing of this complaint, at a regular wage of $50 per month, and worked approximately 84 hours a week.

15.

Plaintiff R. S. Simmons was employed, as alleged in Paragraph 9, above beginning October 1, 1940, and continues working to this date at a regular wage of $50 a month, and worked approximately 84 hours a week.

16.

Plaintiff L. L. Garvin was employed, as alleged in Paragraph 10 above, beginning December 14, 1940, and continues working to this date at a regular wage of $50 a month, working approximately 84 hours a week.

17.

Plaintiff W. R. Stewart was employed, as alleged in Paragraph 9 above, beginning January ..., 1940, to September 1, 1940, at a regular wage of $50 a month, working approximately 84 hours a week.

18.

Plaintiff F. C. Smith was employed, as alleged in Paragraph 9 above, from the effective date of the Fair Labor Standards Act until February 1, 1940, at a regular weekly wage of $12, working 96 hours a week. From February 1, 1940, until May 1, 1941, he was employed at a regular weekly wage of $12, and worked approximately 84 hours a week.

19.

Plaintiff G. A. Pereira was employed, as alleged in Paragraph 9 above, beginning March ..., 1940, until October 1, 1940, at a regular weekly wage of $12.50 a week; and from October 1, 1940, until the date of the filing of this complaint at a weekly wage of $20, working 84 hours a week.

20.

Plaintiff M. E. Nowlin was employed, as alleged in Paragraph 9 above, from the effective date of the Fair Labor Standards Act until April 15, 1939, at a regular monthly wage of $95 per month, working 84 hours a week.

21.

Plaintiff R. Brazle was employed, as alleged in Paragraph 8 above, from the effective date of the Fair Labor

Standards Act until on or about August 1, 1940, at the rate of 25½¢ an hour; and from November 1, 1940, until August 1, 1941, at a regular wage of 27½¢ an hour, working approximately 55 hours a week.

22.

All of the plaintiffs were paid less than the rate specified by Sections 6 and 7 of the Fair Labor Standards Act of 1938, and none of them received overtime compensation, as prescribed by the Fair Labor Standards Act. Defendant is liable to plaintiffs for plaintiffs' unpaid minimum wages and overtime compensation, and an additional equal amount as liquidated damages; and in addition, a reasonable attorneys' fee, and the costs of this action.

23.

Since the institution of this suit and prior to the filing of this amended complaint the defendant entered into stipulations with plaintiffs M. E. Nowlin and H. T. Overstreet pursuant to which defendant has paid so much of the claim asserted by plaintiff Nowlin as arose out of his services as bridge tender at Sisters Creek Bridge, and has paid Overstreet his entire claim which arose solely from his employment as bridge tender.

Under the terms of said stipulations the defendant has paid the sum of $500 on account of such attorneys' fees as may be awarded in this proceeding in favor of the prevailing parties, among whom the said Nowlin and the said Overstreet shall be considered, it being stipulated that the amounts paid them should be considered as having been recovered by means of this suit.

Wherefore plaintiffs demand judgment against The North Shore Corporation for the amount of plaintiffs' unpaid minimum wages, overtime compensation, and an additional equal amount as liquidated damages, together with a reasonable attorneys' fee, and costs of this action.

DILLON HARTRIDGE,
LUCIEN H. BOGGS,
Plaintiffs' Attorneys.

The filing of the foregoing second amended complaint is consented to by the defendant, The North Shore Corporation, this June 3, 1943.

SMITH & AXTELL,
W. GREGORY SMITH,
Attorney for Defendant, The North Shore Corporation.

ANSWER OF THE NORTH SHORE CORPORATION TO SECOND AMENDED COMPLAINT.

10 (Title Omitted.)

First Defense.

The complaint fails to state a claim against this defendant upon which relief can be granted.

Second Defense.

The said telephone line was operated by this defendant during the period from October 24, 1938, to April 1, 1942, as of which latter date operation thereof was assumed at its own expense, and by payment of its own wages, by Bayshore Water & Light Company, a corporation. As

regards said telephone line, this defendant shows that each plaintiff who asserts that he performed services in connection therewith only performed services as an operator thereof engaged in making connections and putting calls through. During the whole of said period this defendant was a public telephone company with a public telephone exchange which had less than five hundred stations.

Third Defense.

This defendant says that at none of the times mentioned in the complaint was there any substantial part of the activities of the plaintiffs or any of them relating to commerce from points inside the State of Florida to points beyond the boundaries thereof, or from points beyond the boundaries thereof to points inside the State of Florida.

Fourth Defense.

At none of the times mentioned in the complaint was there any substantial amount of interstate commerce conducted on or over said road or telephone line.

Fifth Defense.

Answering the Second Amended Complaint, paragraph by paragraph, the defendant says:

1. This defendant admits the allegations of paragraph 1.

2. This defendant admits the allegations of paragraph 2, except that it denies that said toll road is used extensively by vehicular traffic from points outside the State of Florida to points on said road and beyond or by vehicular traffic from points on the toll road and beyond to

points outside the State of Florida, either for hire or otherwise. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that said road is an integral part of the highway system of the United States.

3. This defendant admits that there are two large clubs on Fort George Island, but it is without knowledge or information sufficient to form a belief as to the truth of the allegation that their membership consists for the most part of people from other states, and denies that any such members use said toll road in interstate commerce for hire or otherwise. It is without knowledge or information sufficient to form a belief as to the truth of the allegation that there is a large winter colony on Fort George Island, the residents of which come from states other than the State of Florida, but says that if such colony exists its members do not use said toll road in interstate commerce for hire or otherwise. It admits that on said road are located fishing camps as alleged, but it denies that same are used extensively by visitors from Georgia and other nearby States, who use said road in interstate commerce for a toll or fee or otherwise. It admits the other allegations of said paragraph, except the allegations that from time to time boats stop at the dock at Sisters Creek Camp to replenish their supplies or have supplies delivered to them from Jacksonville, Florida, and to pick up passengers or discharge passengers, as to which allegation it is without knowledge or information sufficient to form a belief as to the truth thereof, but in any event it says that such use of said road as may be made under such circumstances is insubstantial and inconsequential in character, if it exists.

4. It admits the allegations of paragraph 4, but says that such resales in original packages do not constitute

commerce within the meaning of the Fair Labor Standards Act, and that none of the use of said road as exhibited in said paragraph constitutes commerce interstate in character. As to the use of said road for delivery of the United States mail, it says that the United States mail is carried over said road once each way six days out of every week. Tolls are charged by this defendant to all persons using said road for whatever purpose, except for certain individuals who are granted courtesy passes over the same and for certain other individuals who are passed over the road toll free by reason of having granted, or being successors in title to persons who have granted to this defendant's predecessor in title rights of way for the construction of said road. The mailcarrier passes over said road on a right of way pass, without charge for his or her own passage or for the passage of such mails.

5. It admits the allegations of paragraph 5, except as follows: It denies that Bayshore Water & Light Company renders services in connection with said toll road. It denies that said telephone line is daily used in interstate commerce. It denies that the services rendered by plaintiffs to defendant and to Bayshore Water & Light Company are or ever have been so inter-related and interchangeable that it is impossible completely to separate them. It says that since April 1, 1942, the time spent by the several plaintiffs upon the operation of the telephone line has been separately recorded and kept, and separately paid for at a rate of not less than 30¢ per hour by Bayshore Water & Light Company and that the time so paid for by Bayshore Water & Light Company has not been deducted from the employees' time nor pay with and from this defendant.

6. It admits the allegations of paragraph 6, except the allegation that the said J. F. Booth was employed in any-

wise in maintenance work on said telephone line, which it denies. It further denies that his services were essential to the use of the telephone line in interstate commerce or otherwise. It shows that such interstate commerce as took place over said toll road was insubstantial and inconsequential in amount.

7. It admits the allegations of paragraph 7, but says that such work of erecting the telephone line as said parties did was not interstate commerce, even though essential to the use of the telephone line for such interstate commerce as was later carried on over it. It denies that their services were otherwise essential to the use of said telephone line. It shows that such interstate commerce as took place over said toll road was insubstantial and inconsequential in amount.

8. It admits the allegations of paragraph 8, but says that such interstate commerce as took place over said toll road was insubstantial and inconsequential in amount.

9. It admits the allegations of paragraph 9, but says that such interstate commerce as took place over said toll road was insubstantial and inconsequential in amount. As to the employment of said plaintiffs upon the telephone line it shows that the work of each in connection therewith was not otherwise than as an operator thereof engaged in making connections and putting calls through, and that at no time did said telephone line have more than ten stations and that this defendant was, insofar as said telephone line is concerned, during the period of the employment of each of said plaintiffs, a public telephone company with a public telephone exchange which had less than five hundred stations and that the amount of interstate commerce carried by said line was insubstantial and inconsequential in amount.

10. It admits the allegations of paragraph 10, but says that such interstate commerce as took place over said toll road was insubstantial and inconsequential in amount.

11. It admits the allegations of paragraph 11, except the allegation that said toll road and said Bayshore Water & Light Company were operated in interstate commerce, as to which allegation it shows that the amount of interstate commerce over said toll road and said telephone line were insubstantial and inconsequential in amount and it therefore denies that plaintiffs were engaged in interstate commerce within the meaning of the Fair Labor Standards Act.

12. It denies the allegations of paragraph 12. It shows that the said J. F. Booth was employed as foreman of the maintenance work on said toll road, and that he had the power to hire and fire the maintenance employees who were under him and that he was an executive or administrative official of the defendant. It further shows that the said J. F. Booth was employed by the defendant from the effective date of the Fair Labor Standards Act until the week which ended October 9, 1941, at which time he was dismissed for good cause and paid more than two weeks pay in advance. During said period said plaintiff worked at varying times, but often less than 54, and never as much as 84 hours per week. His pay varied from $25.00 up to $35.40 per week. There is attached hereto, marked Exhibit "A" and by reference made a part hereof, a table of the time and pay of the said plaintiff.

13. As to the allegations of paragraph 13, this defendant denies same, except insofar as they are consistent with the tabulations hereto attached, marked, respectively, Exhibits "B", "C", "D" and "E", which show the hours worked by said employees and the amount paid them week

by week from the effective date of said Act to and including the week ending February 19, 1943. As to the time and wages of said employees subsequent to that date and up to and inclusive of the date of the filing of the second amended complaint, the following tabulations show same:

Period	J. A. Lang		Amos Harris		Nolan Lang, Jr.	
	Hrs.	Amount	Hrs.	Amount	Hrs.	Amount
WE 2/19/43	36	16.20	36	14.40	..	....
WE 2/26/43	40	20.00	40	20.00	..	....
WE 3/ 5/43	42	21.00	38	19.00	..	....
WE 3/12/43	44½	22.25	44½	22.25	..	....
WE 3/19/43	41	20.50	41	20.50	..	....
WE 3/26/43	40	20.00	40	20.00	..	....
WE 4/ 2/43	39½	19.75	42½	21.25	..	....
WE 4/ 9/43	38	19.00	38	19.00	..	....
WE 4/16/43	8	4.00	37½	18.75	..	....
WE 4/23/43	48½	24.25	48½	24.25	..	....
WE 4/30/43	41	20.50	41	20.50	..	....
WE 5/ 7/43	37	18.50	35	17.50	..	....
WE 5/14/43	45	26.85	45½	22.75	..	....
WE 5/21/43	40½	24.30	40½	20.25	..	....
WE 5/28/43	41	24.60	40½	20.25	31	15.50
WE 6/ 4/43	34½	20.70	34½	17.25	8	4.00

14. Defendant admits the allegations of paragraph 14 as to the employment of said plaintiff, N. W. Smith, but says that the tabulation hereto attached, marked Exhibit "F", correctly reflects the pay received by the said N. W. Smith during his employment which terminated with the week ending September 30, 1942. The hours of the said said N. W. Smith as shown on said tabulation were not separately kept and recorded, but are this defendant's best estimate of the time actually spent by him on his employment. During the period down to and inclusive of the semi-monthly payroll of May 31, 1940, the said N. W. Smith was on commission receiving a per-

centage of the tolls collected by him in his employment. Thereafter up to the semi-monthly payroll ending May 15, 1941, his salary was $50.00 per month for which he was supposed to put in 72 hours per week, being 12 hours per day on six days of each week. Whenever the said plaintiff put in more time in any week than the above he was paid extra therefor as shown on said schedule. From May 15, 1941, to February 15, 1942, his pay was $60.00 per month on a basis of 72 hours per week and from February 15, 1942, to the end of his employment his salary was $70.00 per month for 72 hours per week. Where inconsistent herewith, the allegations of paragraph 14 are denied.

15. According to the records of this defendant the name of the plaintiff Simmons was Robert L. Simmons. His employment with the defendant, according to this defendant's records, began October 15, 1940, and terminated February 28, 1942. His pay per month from October 15, 1940 to August 15, 1941, was $50.00. From August 15, 1941, to November 30, 1941, it was $55.00. From December 1, 1941, to February 28, 1942, it was $67.00. The attached tabulation of his approximate hours and pay, marked Exhibit "G", is hereby by reference made a part hereof.

16. This defendant admits the allegations of paragraph 16 as to the employment of the plaintiff, L. L. Garvin. It says that it has no record of the hours worked by the said L. L. Garvin and that its present management is unfamiliar with the employment of the said L. L. Garvin up to October 15, 1941. The attached tabulation, Exhibit "H", shows the hours of the said L. L. Garvin by the merest estimate or guess-work down to October 15, 1941. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allega-

tion that said plaintiff worked 84 hours per week as alleged prior to October 15, 1941, but according to the records of the company the employment of the said plaintiff began with the week ending Dec. 19, 1940, and continued down to and inclusive of the week ending May 22, 1941, at the rate of $12.50 per week. Thereafter, until October 15, 1941, the weekly pay rate of said plaintiff was $15.00 per week. Commencing October 15, 1941, the hours of employment of the said L. L. Garvin have been in accordance with the schedule attached, Exhibit "H", and his pay has been shown upon said schedule. The employment of the said L. L. Garvin by this defendant terminated with the week ending October 2, 1942.

17. The plaintiff, W. R. Stewart, was employed as alleged in paragraph 9 of the complaint, beginning February 13, 1940, to August 15, 1940. During this period of his employment his name appeared on the defendant's records as Wm. Stewart. To and including the semi-monthly payroll of May 31, 1940, he was employed on a commission basis receiving a percentage of the tolls collected by him. From June 1, 1940, to August 15, 1940, he was paid at the rate of $50.00 per month for 72 hours per week work.

Commencing with the week which ended October 16, 1941, down to and inclusive of February 20, 1943, said plaintiff was employed as foreman of the road maintenance crew and during said period was an administrative or executive official of this defendant having the power to hire and fire and being in complete charge of such road maintenance crew.

Two tabulations, marked, respectively, Exhibits "I" and "J", are hereto attached and hereby, by reference, made a part hereof, exhibiting the time put in by said plaintiff in his employment and the amount paid him. On Exhibit

"I" the time is not accurately kept, but is estimated in accordance with the duties which the said plaintiff is supposed to have performed. On Exhibit "J" the time is accurately reflected inasmuch as it is the composite amount of time put in by the road maintenance crew and said plaintiff worked only when they worked and their time was accurately kept. As to the time and wages of said employee subsequent to February 19, 1943, up to and inclusive of the date of the filing of the second amended complaint, the following tabulation shows same:

Period	Hours	Amount
WE 2/19/43	36	25.00
WE 2/26/43	9	4.69

18. According to the records of this defendant the name of the plaintiff Smith was Frank Smith. The attached schedule marked Exhibit "K", hereby by reference made a part hereof, reflects the hours of employment and pay of the said plaintiff so far as they can be ascertained from the records of this defendant, and the present management of this defendant has no personal knowledge of the details thereof except for the pay received by the said plaintiff for the week ending October 30, 1941. The plaintiff, Frank Smith, received as compensation for the work performed by him a percentage of the tolls collected by him in his employment down to and inclusive of February 6, 1940. Thereafter the attached schedule, Exhibit "K", shows as well as can be shown, his hours of employment and rate of pay.

19. This defendant admits the allegations of paragraph 19 as to the employment of the plaintiff G. A. Periera. It says that it has no record of the hours worked by the said G. A. Periera and that its present management is unfamiliar with the employment of the said G. A. Periera

up to October 15, 1941. The attached tabulation, Exhibit "L", shows the hours of the said G. A. Periera by the merest estimate or guess-work down to October 15, 1941. This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that said plaintiff worked 84 hours per week as alleged, prior to October 15, 1941, but according to the records of the company the employment of the said plaintiff began with the week ending May 16, 1940, and continued down to and inclusive of the week ending November 14, 1940, at the rate of $15.00 per week. Thereafter, until October 15, 1941, the weekly pay rate of said plaintiff was $20.00 per week. Commencing October 15, 1941, plaintiff has worked 10½ hours per day, six days per week, unless otherwise shown upon the attached tabulation, and his rate of pay was $120.00 per month from that time on down to the present date. Any extra time put in by the said plaintiff was compensated for at the rate of $3.00 per day. As to the time and wages of said employee subsequent to February 19, 1943, up to and inclusive of the date of the filing of the second amended complaint, the following tabulation shows same:

Period	Hours	Amount
SMP 2/28/43	136½	66.00
SMP 3/15/43	160½	69.00
SMP 3/31/43	168	66.00
SMP 4/15/43	136½	62.50
SMP 4/30/43	136½	62.50
SMP 5/15/43	136½	62.50
SMP 5/31/43	136½	62.50

20. As is alleged in paragraph 23, settlement has been made with the plaintiff, M. E. Nowlin, on account of his employment as drawbridge tender at Sisters Creek Bridge which commenced April 15, 1939. Prior to April 15, 1939,

the said plaintiff was employed as alleged in paragraph 20. The tabulation hereinafter appearing shows the approximate hours in such employment and his pay during the period of the effect date of the Fair Labor Standards Act to April 15, 1939. Where inconsistent with this tabulation the allegations of paragraph 20 are denied. The tabulation follows:

Period	Hours	Amount
SMP 10/15/38	192	42.50
SMP 10/31/38	192	42.50
SMP 11/15/38	192	42.50
SMP 11/30/38	198	42.50
SMP 12/15/38	198	42.50
SMP 12/31/38	198	42.50
SMP 1/15/39	192	47.50
SMP 1/31/39	192	47.50
SMP 2/15/39	192	47.50
SMP 2/28/39	192	47.50
SMP 3/15/39	212	54.50
SMP 3/31/39	192	47.50

21. Defendant admits the allegations of paragraph 21 so far as the same are consistent with the tabulation hereto attached, marked Exhibit "M", hereby by reference made a part hereof, otherwise same are denied. The said tabulation shows the actual time put in by said plaintiff for the full period of his employment and the actual amount paid him each week for the time so put in. His rate of pay during part of said period was 27½¢ per hour and during the rest of said period was 25¢ per hour.

22. This defendant denies the allegations of paragraph 22, except the allegation that overtime was not paid as prescribed by the Fair Labor Standards Act.

23. Defendant admits the allegations of paragraph 23.

24. Since April 1, 1942, the plaintiffs hereinafter listed were paid the amounts of money hereinafter listed by Bayshore Water & Light Company for their services in the operation of the telephone line. This sum was calculated at the rate of 30¢ per hour and they were paid for that time said sums in addition to their regular pay from this defendant, even though the time so put in on the operation of the telephone line was not deducted from the time credited to them as employees of this defendant, which is to say that they were paid for the time put in by them in operating the telephone line both by Bayshore Water & Light Company and this defendant.

The list of payments so made is as follows:

Period Ending	L. L. Garvin		G. A. Periera		N. W. Smith	
	Hours	Amount	Hours	Amount	Hours	Amount
4/10/42	5/6	.25	...	...	...	..
4/15/42	...	..	7⅔	2.34	½	.16
4/30/42	2⅔	.85	9	2.74	13/30	.13
5/15/42	3-1/10	.93	8½	2.55	⅓	.09
5/29/42	2½	.76	9½	2.87	½	.14
6/15/42	2⅔	.81	7½	2.29	½	.15
6/30/42	1½	.49	9	2.64	4/15	.08
7/15/42	2½	.75	7⅓	2.21	⅓	.11
7/31/42	2½	.78	6	1.74	4/15	.08
8/28/42	2	1.20	...	...	⅔	.20
9/ 4/42	5	1.55	...	...	1	.33
10/ 2/42	9	2.80	...	...	...	..
11/13/42	...	...	10	3.11	...	..

Period Ending	L. L. Garvin Hours	L. L. Garvin Amount	G. A. Periera Hours	G. A. Periera Amount	N. W. Smith Hours	N. W. Smith Amount
12/ 1/42	...	...	6	1.74	...	..
1/14/43	...	...	4½	1.36	...	..
2/ 5/43	...	...	6	1.88	...	..
4/ 9/43	...	...	10⅓	3.13	...	..
5/ 7/43	...	...	9⅓	2.91	...	..
6/10/43	...	...	9⅓	2.87	...	..

SMITH & AXTELL,
Attorneys for Defendant.
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

Received a copy of the foregoing Answer this 15th day of June, A. D. 1943.

DILLON HARTRIDGE,
LUCIEN H. BOGGS,
Attorneys for Plaintiffs.

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22 STIPULATION No. 1 AS TO FACTS.

In the United States District Court, in and for the Southern District of Florida.

H. T. Overstreet, et als, Plaintiffs,
vs. No. 393—J—Civil.
The North Shore Corporation, a corporation, Defendant.

William J. Scott, Rubin Knox and W. M. Young, Plaintiffs,
vs. No. 588—J—Civil.
The North Shore Corporation and Bayshore Water and Light Company, Defendants.

It Is Hereby Stipulated And Agreed by and between the respective parties to the two cases above styled, which

have been consolidated for the purpose of trial, as follows:

I.

The North Shore Corporation owns Heckscher Drive, the toll road mentioned in each of the complaints above styled extending from U. S. Highway No. 17 at a point about one-half mile north of Trout River in Duval County, Florida, to a point near the westerly shore of Fort George Inlet, also in Duval County, Florida. This Heckscher Drive is operated as a toll road by virtue of the terms and conditions of Chapter 10490, Laws of Florida, 1925, as amended by Chapter 12464, Laws of Florida, 1927, each of said laws being special acts, which laws authorize said The North Shore Corporation to charge tolls for passage over said road, but do not require such charges. Tolls are charged to all users of said road except such persons as have been granted what are called "courtesy passes" and other persons who granted, or are successors in title to persons who granted, rights of way for the construction of the said road to the predecessor in title of The North Shore Corporation, which persons are passed toll free under passes known as "right of way passes".

II.

The map hereto attached, marked Exhibit "A" and hereby, by reference, made a part hereof, is a true and correct representation of the said Heckscher Drive and all connecting or intersecting public roads, and also shows the location on said Heckscher Drive of all fishing camps and places selling or distributing merchandise.

III.

The attached schedule, marked Exhibit "B", and hereby, by reference, made a part hereof, consisting of two pages

numbered, respectively, 3 and 4, represents an accurate compilation of outgoing long distance calls from all stations on the telephone line mentioned in the complaints in the above two cases from December, 1941, to May, 1943, both inclusive.

IV.

The attached schedule, marked Exhibit "C", and hereby, by reference, made a part hereof, consisting of two pages numbered, respectively, 1 and 2, are true transcripts of certain data with reference to the telephone line mentioned in each of the complaints above styled, which data were among the files of Bayshore Water & Light Company and were used in connection with the preparation of the respondent's case mentioned in the next succeeding paragraph hereof. In making this admission the plaintiffs do not concede the correctness or the completeness of the items included in Schedule "C".

V.

On a date between August 1st and September 6th, 1941, E. E. McKenna filed his petition against Bayshore Water & Light Company with the Florida Railroad Commission seeking restoration of telephonic service which he claimed had been discontinued on or about August 1, 1941. The relief sought by said petition was granted. By an order of the Railroad Commission of the State of Florida, dated July 20, 1942, an inter-company traffic agreement between Bayshore Water & Light Company and Southern Bell Telephone & Telegraph Company was approved, as were the "regulations and schedules of charges applying to both interstate message toll telephone service and intrastate message toll telephone service" filed with said Commission by Bayshore Water & Light Company, and conduct

of its business by said Bayshore Water & Light Company under said order was ordered made effective at seven o'clock A. M. July 15, 1942, since which date Bayshore Water & Light Company has functioned as a duly qualified and regulated public telephone company under the laws of the State of Florida. The adjudication of the Florida Railroad Commission in this connection was to the effect that respondent, Bayshore Water & Light Company, "has been and is now a 'telephone company' operating and conducting a telephone line used in the conduct of the business of affording telephonic communication for hire within the northeast portion of Duval County, Florida, along the toll road commonly known as Heckscher Drive". A copy of the order of said Railroad Commission is hereto attached, marked Exhibit "D" and is, hereby, by reference made a part hereof. A copy of said order of July 20, 1942 is also hereto attached, marked Exhibit "E", and hereby, by reference, made a part hereof.

VI.

Subsequent to the order of the Florida Railroad Commission of January 20, 1942, on, to-wit, April 1, 1942, the affairs of Bayshore Water & Light Company were set up on a separate expense basis and thereafter all employees who took any part in the operation of the telephone line had their time separately kept therefor and were paid therefor at the rate of 30c per hour for the time actually put in on the operation of the telephone line.

VII.

The description of the telephone line facilities mentioned in each complaint above styled is as follows: The Company's facilities extend outward from the Heckscher Drive area to the switchboard of Southern Bell Telephone &

Telegraph Company at Jacksonville, Florida. The telephone line from Toll House No. 1 to the said Southern Bell Telephone & Telegraph Company switchboard is a wire leased by Bayshore Water & Light Company from Southern Bell Telephone & Telegraph Company on a monthly rental basis. From Toll House No. 1 to Pilottown, where the line ends, the single trunk telephone line is owned by Bayshore Water & Light Company and its wires are strung over the right of way of Heckscher Drive. At the present time the telephone line has six official stations designated as follows:

Station	Location	Name of Station
No. 1	Toll House No. 1.....	Bayshore.
No. 2	Toll House No. 2.....	New Berlin.
No. 3	Brown's Creek Fishing Camp...	Brown's Creek.
No. 4	Clapboard Creek Fishing Camp..	Clapboard Creek.
No. 5	Mack's Fishing Camp	Sister's Creek.
No. 6	Chattin's Store at Pilottown.....	Pilottown.

In addition to the foregoing stations, there is one other outlet on the line which is at a telephone in the drawbridge tender's booth on the Sister's Creek Drawbridge, which telephone is not open to public use and is used only to communicate to or from the tender on the drawbridge.

VIII.

Telephone Line, History and General Method of Operation:

Period No. 1: From the time of the construction of the telephone line which was from November, 1937, to February, 1938, to the time when the said McKenna proceedings were commenced, the method of operation, description of the line, arrangements concerning the line, its purpose,

public relations, et cetera, are set out in the attached Exhibit "F", hereby, by reference, made a part hereof. The said exhibit speaks as of a date during the said proceeding by the said McKenna and gives such history prior to that date.

Period No. 2: The said Exhibit "F", indicates the method of operation during period No. 2 which was the period during the pendency of the said McKenna proceedings and up to and including the qualification of the company as a telephone company accomplished by the filing of its tariffs, et cetera, with the Florida Railroad Commission and resulting in the operation which commenced at seven o'clock A. M. July 25, 1942. During this period there was no inter-company connecting arrangements with Southern Bell Telephone & Telegraph Company, no charges were made for the use of said telephone line, and the placing of long distance calls over the same was discouraged by the employee plaintiffs at the direction of the defendants. In case of insistence on the part of any member of the public that he be permitted to place a long distance call, he was so permitted upon the payment or guarantee of payment of the Southern Bell Telephone & Telegraph Company's charges on such calls.

Period No. 3: Period No. 3 extends from seven o'clock A. M. July 25, 1942 to the date of this stipulation, and the business of Bayshore Water & Light Company, consisting of the operation of said telephone line, has been as a fully regulated public telephone company under the laws of the State of Florida. Subsequent to full qualification with the Florida Railroad Commission, the said Bayshore Water & Light Company took steps to ascertain its status with the Federal Communications Commission, which status is accurately stated in the latter of said commission hereto at-

tached, marked, Exhibit "G", and hereby, by reference, made a part hereof.

IX.

The station at Eastport mentioned in Exhibit "F" has never been made available to the use of the public, and the station in the drawbridge tender's booth on the Sister's Creek Drawbridge, which still exists, has never been made available to the public. The telephone at Eastport was disconnected and removed on or about August 1, 1942.

X.

The attached sheet, Exhibit "H", contains a tabulation, compiled from statements rendered to Bayshore Water & Light Company by Southern Bell Telephone & Telegraph Company, showing the information indicated thereon.

XI.

The carrier of the United States mails mentioned in each complaint travels said Heckscher Drive carrying the United States mail and parcel post once each way between Jacksonville, Florida and Pilottown, Florida (where the postoffice is designated as Fort George, Florida) six days each week. The mailcarrier passes over the road on a right of way pass, and pays no toll. The mail route of said carrier includes New Berlin, Florida and the community at the Southern tip of Dames Point.

XII.

Attached hereto as Exhibit "I" is a compilation prepared by The North Shore Corporation, which purports to show

the total number of cars travelling over the Heckscher Drive from October 24, 1938 through June 12, 1943, and also purports to show the number of cars bearing license tags other than those issued by the State of Florida. Plaintiffs admit that the exhibit accurately reflects figures shown on the source material from which it is compiled, but do not admit that the source material is accurate and reserve full right to examine witnesses on the completeness and accuracy of the source material. The source material from which said exhibit is compiled consists of daily reports made by toll collectors between the dates of October 24, 1938 and June 12, 1943. The reports, other than that of the day man at Toll House No. 1, are made to the day man at Toll House No. 1 by the other toll collectors. The day man at Toll House No. 1, in turn, makes a report which represents a tabulation of the other reports with his own report, and sends his report into the home office of the company, with the other toll collectors' reports thereto attached. The tabulation which is Exhibit "I" is an analysis of the reports so made by said day man at Toll House No. 1 since October of 1938. Months left blank in Exhibit "I" are months for which such records could not be found.

XIII.

The attached paper, Exhibit "J", is a true and correct copy of a Wage & Hour Release of October 17, 1942.

XIV.

The attached Exhibit "K", hereby by reference, made a part hereof, is a tabulation of the license numbers, including State designations, of all cars reported by the toll collectors as using Heckscher Drive between the dates of June 4, 1943 and June 21, 1943. Except for this limited

period, license numbers of cars so using the drive have not been kept. During this period toll collectors' reports, all prepared by the plaintiff, George Pereira show 127 cars bearing foreign licenses to have used the drive, 26 of which were cars using same on more than one trip. The percentage of foreign cars using the drive between said dates, which used the same more than one time, is 20.4% of the total.

XV.

Included in the answers of the defendant in the two cases above styled, either in the bodies of the answers or as exhibits are various schedules purporting to show the dates of payment, hours paid and amounts of payment of the plaintiffs in the said two suits. It is admitted that the several amounts of money thus shown were actually paid to the respective plaintiff as therein stated and on the stated dates. As to the Plaintiffs J. A. Lang, Isadore Barnett, Amos Harris, N. Lang, Jr. and R. Brazle (Case No. 393—J—Civil) it is conceded that the number of hours worked as set forth in the schedule included in and attached to the answer respectively show the number of hours worked.

XVI.

The attached excerpts, Exhibit "L", are true and correct excerpts taken from the "Report of Chief of Engineers of the U. S. Army, 1941, Part 2", officially known as House Document 506, 77th Congress, 2d Session, the excerpts being taken from pages 603 and 604 of said Part 2.

XVII.

The attached Exhibit "M" marked "North Shore Corporation Analysis of Foreign and Other Cars Using Road

for the Months Indicated", is an analysis prepared in the same manner as is Exhibit "I" hereinabove referred to, and gives all information still in the records of The North Shore Corporation concerning the traffic in months and years prior to October 1938.

In so stipulating, plaintiffs make the like reservation as is made in Paragraph XIII of this stipulation.

XVIII.

The attached Exhibit "N" is a tabulation prepared from registers of the Ribault Club and Fort George Club for the periods thereon indicated, showing a comparison of out-of-state guests and members as contrasted with those giving addressed in the State of Florida. It is admitted that the greater portion of the persons from out of the state indicated on this exhibit arrived by train at the Union Station in Jacksonville, Florida; that persons so arriving whose destination was the Ribault Club ordinarily were conveyed from the station to the club in public conveyances for hire, and that their baggage ordinarily was conveyed from the Union Station to the club is a station wagon belonging to said club.

With reference to persons shown on said exhibit as registered at Fort George Club, persons arriving at the station were ordinarily conveyed to the club in a station wagon belonging to said club, but sometimes in private conveyances owned by members of the club; that their baggage ordinarily was transported to the club in the station wagon. Among the persons so registered in both clubs, some came by private yacht anchored off the docks abutting upon the property of the respective clubs. A very few only each season of the guests arriving at either

of said clubs arrived in their own privately owned automobiles, not exceeding four or five in any season.

XIX.

In stipulating as above the parties signatory expressly reserve to themselves any and all right of objection on the ground of materiality or relevancy of the facts hereinabove recited; nor shall anything in this stipulation preclude any party from introducing additional evidence relating to the several items of this stipulation, not inconsistent with the specific admissions as made by such party.

Dated at Jacksonville, Florida this 22nd day of June, A. D. 1943.

DILLON HARTRIDGE,
LUCIEN H. BOGGS,
Attorneys for Plaintiffs, Case 393—J Civil.
JOHN E. LAKE,
Attorney for Plaintiffs, Case 588—J Civil.
SMITH & AXTELL,
W. GREGORY SMITH,
Attorneys for Defendant in both Cases.

EX. B.

	Place Called	Time	Chg. Reversed	Amount	Tax
December, 1941—					
3—Mrs. McKenna					
January, 1942—					
2—Mrs. Henns	Mayport, Fla.	2 min.		.15	
8—Go McCroy	Fernandina, Fla.		x		
8—Fernandina	Geo. McCroy	2 min.	x		
February, 1942—					
7—Mrs. Allynn Overall..	Chatahoochee, Fla.			1.90	
16—Mr. Duncan	Mayport, Fla.		x		
24—Elvin Leonard	Western Union			.28	
27—Ed McKenne	Atlanta, Ga.		x		
March, 1942—					
3—David Bondreaus	Carrabelle, Fla., teleg..			.33	
16—H. R. Lindsey	Fernandina, Fla.			.30	
17—James Hudnall	Mayport, Fla.		x		
29—Ed McKenna	?			2.20	

April, 1942—					
7—McKenna	Atlanta, Ga.	x			
11—S. Chenault	St. Augustine, Fla.	x			
11—S. Chenault	St. Augustine, Fla.	x			
30—Leonard Elvin	Telegram—Western Union		.30		
May, 1942—					
19—Mr. Cauty	Cocoa, Fla.	x			
23—L. Moss	Jacksonville Beach	x			
June, 1942—					
18—Mrs. Alma Scherene..	Hialigh, Fla.	x			
21—Alvin Flint	Jacksonville Beach	x			
21—Mr. Alston	Jacksonville Beach	x			
28—Mrs. Johnson	Camp Blanding	chgd. to 3-1320W.			
July, 1942—					
None					
August, 1942—					
12—B. L. Smith	Brooksville, Fla.		1.10	.15	
28—Mr. Walthers	Brunswick, Ga.	x			
29—Mrs. Broward	Jacksonville Beach		.25	.05	

COPY BOUND VERTICALLY

	Place Called	Time	Chg. Reversed	Amount	Tax
30—Mrs. Broward	Jacksonville Beach			.20	.05
6—E. H. Walters	Brunswick, Ga.			.90	.05
12—Harry Baker	Jacksonville Beach			.45	.05
September, 1942—					
6—Mrs. Broward	Jacksonville Beach			.10	.01
7—Mr. Miller	Mayport, Fla.			.10	.01
October, 1942—					
21—Mr. Thompson	Fernandina, Fla.			.20	.02
21—Mr. Thompson	Plant City, Fla.....		x		
7—Mrs. Hennis	Mayport, Fla.			.15	.01
7—Mrs. Hennis	Mayport, Fla.			.15	.01
19—Mrs. Hennis	Mayport, Fla.			.15	.01
18—Mrs. Driggers	Mayport, Fla.			.10	.01
23—Mrs. Lindsey	Fernandina, Fla.			.35	
November, 1942—					
9—Woolery	Mayport, Fla.	4 min.		.20	.02
			(131 messages)		

December, 1942—						
4—Capo	Starke, Fla.			.70	.14	
17—Chief Joyner	Fernandina, Fla.			.35	.07	
17—Chief Joyner	Fernandina, Fla.			.30	.06	
			(145 messages)			
26—A. K. Davis	Bristol, Fla.			.80	.16	
January, 1943—						
3—R. R. Hogan	Savannah, Ga.	3 min.	x			
10—Mr. J. Murray	New Orleans, La.	3 min.	x	(total calls 121)		
February, 1943—						
15—Mr. Webb	Jacksonville Beach	2 min.		.15	.02	
18—Capt. Causey	Norfolk, Va.	2 min.	x	(147 messages)		
March, 1943—						
5—Mr. Farmer	Fernandina, Fla.	2 min.		.20	.02	
8—Alma Scherene	Atlanta, Ga.	2 min.	x			
9—Alma Scherene	Hialiah, Fla.	2 min.	x			
29—Ed McKenna	Fernandina, Fla.	2 min.	x			
31—Mr. Rawerson	Fernandina, Fla.	4 min.	x			
		(Total messages—227)				
9—Mr. Kincham	Savannah, Ga.	3 min.		.65	.12	
9—Western Union teleg...	Fernandina, Fla.	3 min.		.35		

COPY BOUND VERTICALLY

	Place Called	Time	Chg. Reversed	Amount	Tax
April, 1943—					
11—Mr. Mac Goode	Starke, Fla.	3 min.		.42	.08
13—H. G. Ervin	Fernandina, Fla.	3 min.		.25	.05
17—Mr. Kincham	Savannah, Ga.	3 min.		.60	.12
20—Mrs. MacKenna	Fernandina, Fla.	3 min.		.20	.02
20—Mr. Waldo	Fernandina, Fla.	2 min.		.20	.02
23—Mr. Kinchin	Savannah, Ga.	5 min.		.60	.12
30—Mr. Ansley	Americus, Ga.	3 min.	x		
		(Total messages—225)			
May, 1943—					
2—Capt. Durocher	Miami, Fla.	2 min.		.80	.16
3—Mr. Barnett	Cocoa, Fla.	3 min.		.95	.19
4—Holtzendorf	Brunswick, Ga.	3 min.	x		
12—Mr. Bassett	Savannah, Ga.	2 min.		.55	.11
19—Mr. Bassett	Savannah, Ga.	5 min.		.90	.18
24—H. Brazel	Fernandina, Fla.	2 min.		.15	.02
24—H. Brazel	Fernandina, Fla.	2 min.		.15	.02
28—Mr. Ervin	Fernandina, Fla.	1 min.		.20	.02
31—L. Christopher	Fernandina, Fla.	3 min.		.20	.02
31—Mr. Mason	Fernandina, Fla.	2 min.		.20	.02
		(Total messages to So. Bell—189)			

EX. C.

	Chg.	Tax
November, 1940—		
Oct. 23—Manitowoc, Wis., (telegram) signed Pat Newsome.....	.72	.04
Oct. 23—Manitowoc, Wis., (telegram) (collect) Pat Newsome	.72	.04
Oct. 23—Manitowoc, Wis., to Virginia or Bruno Newsome	4.55	.20
Oct. 26—Jacksonville, Fla., (telegram) signed Vernon	.20	.01
Oct. 31—Baldwin	.20	..
Nov. 9—Edwards calling Mrs. J. C. Atkins	1.75	.15
December, 1940—		
Oct. 22—St. Augustine (collect) from Thomas Johnson	.90	.10
Nov. 23—Brooklyn, N. Y.	1.40	.15
Nov. 24—Green Cove Springs—Holmes to Mrs. Manst	.30	..
Nov. 27—Jacksonville Beach to Miss Carl Mabel	.25	..
Dec. 1—Mayport from McKinna to Peck	.15	..
Dec. 17—Norfolk, Va. (telegram) signed R M. Brown	.42	.02

	Reversed	Chgs. Coll.
January, 1941—		
Jan. 2—Tampa, Fla., Bobbie Brown..	x	
Jan. 12—St. Augustine, Fla., Masters..		.90
Jan. 11—Tampa, Fla., R. M. Brown....	x	
17—Tampa, Fla., R. M. Brown....	x	
18—Tampa, Fla., R. M. Brown....	x	
Jan. 18—Tampa, Fla., R. M. Brown....	x	

	Reversed	Chgs. Coll.
22—Tampa, Fla., R. M. Brown....	x	
24—Tampa, Fla., R. M. Brown....	x	
25—Mt. Lake, Fla., E. K. Hubbard		2.45
27—Tampa, Fla., R. M. Brown....	x	
27—Tampa, Fla., R. M. Brown....	x	
29—Atlantic City, N. J., Brown, R. M.	x	
29—Tampa, Fla., R. M. Brown....	x	
30—Tampa, Fla., R. M. Brown....	x	
30—Tampa, Fla., R. M. Brown, Jr.	x	
30—Mayport, Fla., R. M. Brown..		.25
31—Tampa, Fla., S. S. Sanford...		1.00
18—Tampa, Fla., R. M. Brown....	x	
27—Mobile, Ala., Mrs. G. W. Davis		3.60
February, 1941—		
Feb. 1—Benson Springs Jct., J. Wright	x	
4—Sanford, Fla., J. Wright.....	x	
7—Mandarin, Fla., Ludow		.10
7—Greenwich, Conn., Mr. Filley.		3.00
7—Tampa, Fla., Paul Whitehurst	x	
9—Tarrytown, N. Y., A. R. McEwen	x	
14—Fernandina, Fla., Bill Yates..	x	
14—Fernandina, Fla., Bill Yates..	x	
15—Tampa, Fla., R. M. Brown....	x	
24—Tampa, Fla., R. M. Brown, Jr.	x	
25—Philadelphia, Penn., Mr. Moss		2.70
27—Boston, Mass., N. Hubbard....		1.50
27—Boston, Mass., N. Hubbard....	x	
	Chg.	Tax
March, 1941—		
Feb. 25—Philadelphia—Morris to Bower	2.25	.20

	Chg.	Tax
Mar. 3—Augusta calling Hogar	4.85	.20
Mar. 7—New Orleans to E. Cal Kerr..	.30 R	
Mar. 7—New Orleans (telegram) signed Mummy Heckscher	1.69	.08
Mar. 14—Fernandina (collect) from Mrs. Howard Hodges	.25	..
April, 1941—		
Mar. 31—Clinton, Mass., from Goodhue.	2.55	.20
Apr. 4—West Palm Beach—R. S. Humphrey to Mrs. Gaston	1.60	.15
Apr. 5—Ponte Vedra from Goodhue...	.15	
Apr. 6—West Palm Beach—Brown to S. P. Milling	1.10	.15
Apr. 10—Fernandina—Tel. 86	.25	
Apr. 12—Norway, S. C., (telegram) signed Vernon	.25	.01
May, 1941—		
Apr. 26—Fernandina (collect) Welder to Mac McArdle	.35	
May 6—Tampa—John Stevens to Mrs. L. Howard	.90	.10
May 6—Jacksonville (telegram) signed Daddy and The Kids	.20	.01
May 15—Augusta from R. M. Brown, Jr.	.90	.10
June, 1941—		
May 31—Tampa from Brown	1.10	.15
June 7—Tampa, Robt. Brown, Jr., to Leroy Foster	.90	.10
June 12—Jacksonville (telegram) signed Vernon	.20	.01
June 12—Maryville, Tenn.	1.30	.15

	Chg.	Tax
June 13—Brunswick, Ga., Lane to Walter Nathan	.55	.10
June 19—Douglas—Holt to Mrs. Wilbur Webb	.55	.10
June 20—Fernandina to Mike Telakos..	.45	
July, 1941—		
June 12—Douglas, Ga., to Wilbur Webb's residence	.55	.10
June 21—Tallahassee — Mrs. Josephine Beckley to C. Beckley.....	.85	.10
June 25—Mayport—Browns Creek to Tony Mayer	.25	
	.10	Messenger fee
June 29—Fernandina — Christopher to Martha Heppard	.35	
August, 1941—		
July 6—Jacksonville Beach	.15	
July 27—Mayport to W. M. Wallace Fish Plant	.15	
Aug. 4—Fernandina	.25	
Aug. 4—Fernandina	.25	
Aug. 10—Mobile from Barron	1.00	.15
Aug. 10—Tampa from Barron	1.20	.15
Aug. 20—Bornwell to O. H. Best Residence	.50	.10
September, 1941—		
Aug. 29—Jacksonville Beach Meyers to Betty Tenman	.25	

October, 1941—	Chg.	Tax
Sept. 21—Jacksonville Beach from Higginbothan	.15	
Oct. 9—Jacksonville Beach from O'Donald	.15	.04
Oct. 16—Jacksonville Beach from Toll Station on Heckscher Drive	.15	
Oct. 18—Jacksonville Drive	.15	
Sept. 26—Atlanta (collect telegram) to J. C. Dudnall	.35	.02
Sept. 30—Perry—to David Arnold	1.00	.15
Oct. 5—Floral Park from Strassler	1.35	.15
Oct. 5—Savannah (collect telegram) to H. R. Lindsey	.30	.03

36 EXHIBIT "D".

Received Mar. 18, 1942.

Order No. 1352.
Docket No. 1457.

Before the Railroad Commission of the State of Florida.

E. E. McKenna, Petitioner,
vs.
Bayshore Water & Light Company, Respondent.

1. Pursuant to Notice No. 789 dated October 23, 1941, this cause came on for hearing before the Railroad Commission at Jacksonville, Florida, on November 10, 1941, at which hearing Dillion Hartridge of Jacksonville, Florida appeared for petitioner, E. E. McKenna; Smith and Axtell of Jacksonville, Florida, for Bayshore Water &

Light Company, respondent, and upon agreement of the respective parties said cause was continued until November 24, 1941, to a hearing to be held at the Seminole Hotel at Jacksonville, Florida.

2. At 10:00 A. M. on November 24, 1941 this matter came on for further hearing before the Commission. Dillon Hartridge appeared for petitioner and W. Gregory Smith for respondent.

3. Thereupon the respondent parties offered their testimony and proofs. After due consideration thereof, and the Commission being advised in the premises, it is found by the Commission that the respondent, Bayshore Water & Light Company is a corporation; that under the laws of the State of Florida it has been and is now a "telephone company" operating and conducting a telephone line used in the conduct of the business of affording telephonic communication for hire within the northeast portion of Duval County, Florida, along the toll road commonly known as Heckscher Drive; that one E. E. McKenna has petitioned said Bayshore Water & Light Company to install telephone service at his place of business located on the present line of said telephone company, which request has been refused to date by said Bayshore Water & Light Company.

4. The Commission further finds that the installation of such telephone service at the place of business of the said E. E. McKenna would not constitute an unjust burden to said telephone company.

Wherefore it is Considered, Ordered And Adjudged by the Railroad Commission of the State of Florida that the said Bayshore Water & Light Company, the same being a "telephone company", immediately install telephone

service for the petitioner, E. E. McKenna, at his store and place of business known as Sisters Creek Camp.

It is further Ordered that said Bayshore Water & Light Company submit to this Commission for consideration and approval its schedule of tariff rates, rules and regulations used by it in the conduct of said telephone business.

Done And Ordered by the Railroad Commission of the State of Florida, in session at its office in the City of Tallahassee, Florida, this 20th day of January, 1942.

M. B. DOUGLASS,
Chairman.

kma.

38 EXHIBIT "E".

Order No. 1355.
Docket No. 1457.

Before the Railroad Commission of the State of Florida.

E. E. McKenna, Petitioner,
vs.
Bayshore Water & Light Company, Respondent.

1. By Order No. 1352, dated January 20, 1942, Bayshore Water & Light Company was found to be a telephone company operating and conducting a telephone line used in the conduct of the business of affording telephonic communication for hire within the Northeast portion of Duval County, Florida, along the toll road commonly known as Heckscher Drive. It was ordered to furnish telephone service to the petitioner, E. E. McKenna, and was further ordered to submit to this Commission for consideration

and approval its schedule of tariff rates, rules and regulations used by it in the conduct of said telephone business.

2. On April 6, 1942, Bayshore Water & Light Company filed its petition for rehearing in this proceeding, and among other things it asked this Commission to stay the effective date of said Order No. 1352 until such time as it could negotiate a connecting company traffic agreement with Southern Bell Telephone & Telegraph Company.

3. It now appears that the Bayshore Water & Light Company has entered into a traffic agreement with Southern Bell Telephone & Telegraph Company, and has agreed to file a copy of said contract and agreement with this Commission. It also has filed a motion to withdraw its petition for rehearing. This motion is granted.

4. Bayshore Water & Light Company has also filed "Regulations and Schedules of Charges applying to both Interstate Message Toll Telephone Service and Intrastate Message Toll Telephone Service" for the approval of this Commission, and has asked that these regulations and schedules be approved effective at 7:00 A. M. on July 25, 1942, the date this line will be cut in on the Long Distance Switchboard of the Southern Bell Telephone & Telegraph Company.

Wherefore, it is Considered, Ordered And Adjudged by the Railroad Commission of the State of Florida that Original Pages 1, 2, 3, 4, 5, 6, 7 and 8 of Regulations and Schedules of Charges applying to both Interstate Message Toll Telephone Service and Intrastate Message Toll Telephone Service of Bayshore Water & Light Company copies of which original pages are hereto attached and made a part of this order, be and the same are hereby Approved.

It is further Ordered that this order shall be and become effective at 7:00 o'clock A. M. on July 25, 1942.

Done And Ordered by the Railroad Commission of the State of Florida in session at its office in the City of Tallahassee, Florida, this 20th day of July, 1942.

M. B. DOUGLASS,
Chairman.

kma.

40 EXHIBIT "F".

Status of Bayshore Water & Light Company.

Bayshore Water & Light Company is a subsidiary corporation to The North Shore Corporation, both being Florida corporations. All the stock in Bayshore Water & Light Company is owned by The North Shore Corporation.

Bayshore Water & Light Company is incorporated under the General Corporation Law of 1925, which provides, in part, that telephone companies shall not be incorporated thereunder (Section 6529 C. G. L.) and its charter specifically provides that it shall not operate as a telephone company.

As of December 31, 1940, Bayshore Water & Light Company had total assets of $8,326.06, which figure included the telephone line at the figure of $483.12. As of that date a reserve for depreciation of $6,250.94 was set up and, thus, the net assets shown were $2,075.12. Total liabilities, exclusive of capital stock, were then $29,241.65. Changes in the financial condition of the company since December 31, 1940 have not materially altered its position.

Description of Telephone Line.

This telephone line is what is known to the Southern Bell Telephone & Telegraph Company, Incorporated, as a Farmers' Telephone Line. Its number on the local exchange is County 7901.

The line is connected with the Southern Bell Telephone & Telegraph Company lines at a point on Heckscher Drive near the City of Jacksonville Zoo and at Heckscher Drive Toll House No. 1. The connection with Southern Bell Telephone & Telegraph Company is under contract of December 2, 1937, copy of which is hereto attached and it by reference made a part hereof. The copy so attached has been furnished Bayshore Water & Light Company by Southern Bell Telephone & Telegraph Company since the Florida Railroad Commission made inquiry of Bayshore Water & Light Company as to the status of the line.

The telephone line extends a distance of 15.3 miles from Heckscher Drive Toll House No. 1 to a booth adjoining Chattin's Store in the settlement known as Pilottown on Batton Island, the whole line being entirely within Duval County.

Telephones are located at seven points on Heckscher Drive. They are as follows:

1. Heckscher Drive Toll House No. 1.

2. Heckscher Drive Eastport Toll House.

3. Heckscher Drive Toll House No. 2.

4. Brown's Creek Fishing Camp.

5. Clapboard Creek Fishing Camp.

6. Heckscher Drive Sister's Creek Draw Bridge Control Room.

7. In booth adjoining draw bridge tender's house at Sister's Creek.

8. In booth adjoining Chattin's Store at Pilottown Settlement.

Except for the telephone in the Brown's Creek Fishing Camp and Clapboard Creek Fishing Camp, every teleprone is within the sixty foot right of way of Heckscher Drive. The Brown's Creek Fishing Camp and Clapboard Creek Fishing Camp are owned by the North Shore Corporation, and are rented by that corporation to tenants, who operate the Camps.

"Subscribers"—Arrangements with Operators.

There are, and never has been, any subscribers to the telephone line.

Bayshore Water & Light Company has never held itself out as furnishing telephones to subscribers and has no facilities for so doing.

Employees or tenants of The North Shore Corporation handle the actual operation of all telephones on the line, with the single exception of the telephone adjoining Chattin's Store at Pilottown.

The telephones numbered 1, 2, 3, 6 and 7 above listed are all operated by employees of The North Shore Corporation, who receive no compensation therefor except their salary from The North Shore Corporation. Their services in connection with the telephones and telephone

line are rendered as a part of their employment by The North Shore Corporation.

As stated the tenants who operate telephones numbered as 4 and 5 above are tenants of The North Shore Corporation. They operate the telephones at their fishing camps as agents of Bayshore Water & Light Company. Their compensation for such services has been two-fold: (1) They were permitted free personal use of the telephones on outgoing calls; (2) They received 25% of all amounts collected by them from third persons for the use of the telephone located at their respective camps and 25% of the charges for in-coming calls.

Telephone numbered 8 above was operated under an arrangement with the proprietor of Chattin's Store which was precisely the same as the arrangement of said fishing camp operators.

None of the operators of the several phones was guaranteed, nor gave a guarantee of any particular income from the telephone operated by him.

The telephones once at Sister's Creek Camp, operated by E. E. McKenna, were on the same footing.

Construction of Telephone Line.

As originally constructed, the telephone line ran only to Sister's Creek. In May, 1941, the line was extended from Sister's Creek to the Pilottown settlement, the telephone in the booth adjoining Chattin's store being then installed.

The construction of the line is a two wire single circuit line. The several telephones are all bridged in on the two

wire lines. All of the telephones are inter-communicating. The telephones now at and beyond Sister's Creek are connected with the rest of the line by a one-circuit armored cable under Sister's Creek, which is a part of the inland waterway. Such cable is expensive, and may be laid only with the permission of the War Department.

Most of the material in the line, including the telephones, from Toll House No. 1 to Sister's Creek was used material when it was originally installed in 1938. The construction in May, 1941, from Sister's Creek to Pilottown was new construction and the telephone at Pilottown is a new telephone.

The quality of the telephone line is not good. The sound of the human voice over the line is blurred and is subject to fading.

The original construction cost $485.12. Repairs, improvement and extension have cost $275.10.

Purpose of the Line.

The telephone line was originally established as an adjunct and aid to the operation of Heckscher Drive, the toll road owned and operated by The North Shore Corporation. It was intended to facilitate communication between the office of The North Shore Corporation in Jacksonville and the several locations on Heckscher Drive, so as rapidly and efficiently to take care of mishaps, needed emergency repairs, necessary emergency policing and the like. As a courtesy to patrons of Heckscher Drive, the fishing camps rented from The North Shore Corporation, and, in general, to afford a means of communication with the City of Jacksonville for those who might have business down Heckscher Drive, or go fishing

in that neighborhood (thereby, of course, promoting traffic) free use of the telephone by such persons was originally permitted. Heckscher Drive traverses portions of Duval County near settlements where there are no telephone connections, or, at least, where there were none when the telephone line was first established. Free use of the telephone was permitted to persons living in these settlements. All such free use was originally intended as pure courtesy. The use became so frequent, however, that the traffic on the line interfered with the prime purpose of its establishment, namely, the efficient policing and handling of Heckscher Drive. Accordingly, a small charge was placed upon the use of the phone by those who requested same, in order to cut down this heavy use. The line was not constructed for the use of such persons, but for policing and operation of Heckscher Drive as stated.

Arrangements Under which use has been Permitted by Others than Bayshore Water & Light Company and North Shore Corporation Employees.

When charges were first set up for the use of the telephone line by others than employees of Bayshore Water & Light Company and The North Shore Corporation, notices were placed beside the telephones in the form and language following:

"Bayshore Water and Light Company, Private Telephone Line Connecting with Southern Bell Telephone Company At Jacksonville, Florida."

"*All Persons* using this telephone are hereby notified and must agree that the owners do not guarantee service to be satisfactory at any time and are not responsible for, or to be held liable in any way for, interruptions caused by the opening of the Draw Bridges, or for any other cause

or reason. This is a privately owned line, erected for the use, convenience and service of the owners primarily and though a small charge is made for handling calls for others, the use of this line by others than employees of the North Shore Corporation is a courtesy extended to the public and not an obligation on the part of the North Shore Corporation. The right is reserved to decline the use of this telephone to any one, at any time, and without assigning any reason. The Rates and Regulations may be changed at any time that it is deemed advisable to do so and this service may be discontinued at any time without notice.

"*All Calls* will be registered at Station No. 1—, and the station from which the respective calls originate will be held responsible for the collection of all charges both local and long-distance. We have no way of charging calls to a Jacksonville subscriber's telephone. Therefore calls made from Jacksonville must be accepted and paid for by the party who is called and who talks from this station; otherwise the call will be refused.

"*No Charges* will be made for the use of any of the telephones on this line by the employees of the North Shore Corporation, either on this local line, or on Jacksonville calls, if on business for the Company, or personal to themselves, but no employee will be permitted to make any call for other parties without paying the regular rates on same nor to use this phone more than 3 minutes at a time.

"*Subject to the Above:*—Calls may be made over this line from the following stations to telephones listed in the Jacksonville Telephone Directory upon the payment of the following charges:

"Station No. 1—at Toll House No. 1, 10¢

"Station No. 2—at Toll House No. 2, 20¢

"Station No. 3—at Sisters Creek Camp, 25¢

"Station No. 4—Not yet located.

"The above rates apply on all completed calls from any one, except as above noted, and are based on three minutes time after the connection is completed. A charge of 5¢ per minute will be made for the time in excess of three minutes.

"*Long-Distance Calls* may be put through from any of the above stations to points out-side-of and beyond the City of Jacksonville.

"The charge on these messages will be the above local line charges, plus the charges made by the Bell Telephone Company for such long-distance messages to points beyond Jacksonville. The operator at this local line station will ascertain from the Long-Distance Operator at Jacksonville the amount of the Long-Distance charge due the Bell Telephone Company and will add to it the local line charge as per the above rates and will make the collection at his local station for the entire bill. He will be responsible for the collection of this bill and no messages, either local or long-distance, can be charged on account.

"*Discontinuance of Service:* The right is reserved to limit or discontinue this service at any time without any notice being required for any reason given.

"THE BAYSHORE WATER
AND LIGHT CO.,
JOHN D. PANNILL,
"By JOHN D. PANNILL,
Local Manager."

The notices were from time to time slightly changed as the line was extended, and after the addition of the phone at Chattin's Store the posted notices read:

"Bayshore Water and Light Company, Private Telephone Line Connecting with Southern Bell Telephone Co. At Jacksonville, Florida."

"*All Persons* using this telephone are hereby notified, and must agree, that the owners do not guarantee service to be satisfactory at any time and are not responsible for nor to be held liable in any way for any interruptions or failure of service for any cause or reason whatsoever.

"This is a privately owned line, erected primarily for the use, convenience and service of the owners. Though a small charge is made for handling calls for others the use of this line by others than the employees of The North Shore Corporation is purely a courtesy extended to the public and not in any way an obligation of The North Shore Corporation or of the Bayshore Water & Light Company. The right is hereby reserved to decline the use of this telephone to any one, at any time, and without assigning any reason therefor.

"The rates and regulations for the use of this telephone may be changed at any time it is deemed advisable to do so, and this service may be discontinued at any time without notice.

"*All Calls* will be registered at Station No. 1, and the stations from which the respective calls originate will be held responsible for the collections of all charges both local and long distance. We have no way of charging calls to a Jacksonville subscriber's telephone, therefore calls made from Jacksonville must be accepted and paid for by the

party who is called at our telephone and who talks from this station. Otherwise the call will be refused and the Jacksonville operator notified that we will not complete the call.

"*No Charges* will be made for the use of any of the telephones on this line by the employees of the North Shore Corporation, either for this local line calls or Jacksonville calls, if such calls are made on business for this corporation, or purely personal calls for themselves,— but no one will be permitted to make any call for another party without paying the regular rates on same,—nor to use this telephone for more than three (3) minutes at time on a free call.

"*Subject to the Above:*—Calls may be made over this line from the following stations to telephones listed in the Jacksonville Telephone Directory upon the payment of the following charges, which also apply on calls from the reversed direction:

"Station No. 1, at Toll House No. 1, 10¢

"Station No. 2, at Toll House No. 2, 20¢

"Station No. 3, at Browns Creek Camp, 20¢

"Station No. 4, at Clapboard Creek Camp, 20¢

"Station No. 5, at Sisters Creek Draw Bridge (Macs Camp), 25¢

"Station No. 6, at Chattens Store (Pilot Town), 25¢

"The above rates apply on all completed calls from any one, except as above noted, and are based on a connection

of three (3) minutes after the connection is made. A charge of 5¢ per minute will be made for the time in excess of three (3) minutes.

"*Long Distance Calls* may be put through from any of the above stations to points outside of and beyond the City of Jacksonville through the agency of The Southern Bell Tel. & Tel. Co. The charges on such messages will be the above Local Line charges, plus the charges made by the Bell Telephone Company for such long distance messages to points beyond Jacksonville. The operator at this local line station will ascertain from the long distance operator at Jacksonville the amount of the long distance charge due the Bell Telephone Co. and will add to it the local line charge and will make the collection for the entire bill at his station, unless arrangements have been made for reversing the charge for the long distance service only. The operator will be responsible for the collection of the bill and no messages, either local or long distance can be charged on account.

"*Discontinuance of Service:*—The right is reserved to limit or discontinue this service at any time without notice."

Never at any time has the use of the telephone line been permitted to the public at large. On the contrary there have been at all times instructions outstanding that certain designated parties were not to be permitted the use of the line at any times under any circumstances, and said instructions have been enforced and such prohibition of the use of the line has been effective.

Since the request by the Florida Railroad Commission to the Bayshore Water & Light Company under date of September 6, 1941 for information as to the operation of

the telephone line, the status of the line has been carefully examined by the officials and attorneys of Bayshore Water & Light Company. The telephone line is now being operated in the manner following:

The employees and tenants of the North Shore Corporation, in connection with the operation of this line, being agents of Bayshore Water & Light Company, and the other agents of Bayshore Water & Light Company heretofore operating the telephones described are continuing that operation. However, no charges are being made for any calls now made over the line. Every person using the line signs a slip reading as follows:

"Telephone Station No. .....
Hecksher Drive,
Duval County, Florida.

"This acknowledges use of telephone of Bayshore Water & Light Company on (Here fill in date) .....

"I called .....

"I understand that the status of this telephone and telephone line is in litigation and that use of this telephone is permitted only on the agreement that if the law requires a charge for the use of the telephone, that charge will be $..... or such other charge as may be fixed by legal authority, and will be paid when billed to me.

"....."

Posted by each telephone is a notice reading as follows:

"Notice."

"The status of this telephone and telephone line is in litigation. Free use of this phone will be permitted

temporarily, but only on condition that the user will sign an agreement to pay for the service, if the ultimate result of the litigation is that free use may not be allowed. While permitting such conditional free use temporarily, the Bayshore Water & Light Company reserves the right at any time to discontinue that free use, or any use whatsoever, of the telephone and line.

"BAYSHORE WATER &
LIGHT COMPANY."

Conclusion.

Bayshore Water & Light Company has never furnished services to subscribers, and proposes not to do so, unless so required by due legal authority, and submits that it is in neither financial nor physical position so to do.

Respectfully submitted,

.....

As Attorney for Bayshore
Water & Light Company.

51 EXHIBIT "G".

Commissioners:
James Lawrence Fly, Chairman,
Paul A. Walker,
Norman S. Case,
George Henry Payne,
T. A. M. Craven,
Ray C. Wakefield,
C. J. Durr.

Address all Communications to The Secretary.
T. J. Slowie, Secretary.

Federal Communications Commission
Washington, D. C.

Received Dec. 17, 1942.

December 12, 1942.

Smith & Axtell,
Attorneys-at-Law,
Bisbee Building,
Jacksonville, Florida.

In re: Bayshore Water & Light Company.

Gentlemen:

This refers to your letter of December 1, 1942 in which you inquire whether the Bayshore Water & Light Company is regarded as a "connecting carrier" under Section 203.

Since the Bayshore Water & Light Company is a "connecting carrier" it is not required to file tariffs under Section 203 of the Communications Act of 1934, as amended. The Southern Bell Telephone and Telegraph Company has filed tariffs covering the inter-state and foreign toll service furnished over the lines of the Bayshore Company.

Very truly yours,
T. J. SLOWIE,
(T. J. Slowie)
Secretary.

EXHIBIT "H".

Tabulation of Additional Information on Long Distance Telephone Calls Taken From Southern Bell Telephone and Telegraph Company's Statements Showing Calls in Addition to Those Shown by Exhibit "B"—(For Months Indicated Only).

	Messages
August, 1942—	
	None
September, 1942—	
Between:	
Sister's Creek and Jacksonville Beach, Fla.....	2

	Messages
October, 1942—	
Between:	
Bayshore and Mayport, Florida	1
New Berlin and Mandarin, Florida	1
Clapboard Creek and Mayport, Florida	1
Sister's Creek and Mayport, Florida	1
Pilottown and Mayport, Fla.	1
Total	5
November, 1942—	
Between:	
Bayshore and Fernandina, Florida	1
Brown's Creek and Jacksonville Beach, Fla.	2
Sister's Creek and Fernandina, Florida	2
Pilottown and Fernandina, Florida	1
Mayport, Florida	2
Perry, Florida	1
Total	9
December, 1942—	
Between:	
Sister's Creek and Atlanta, Georgia	1
Pilottown and Mayport, Fla.	1
Total	2
January, 1943—	
3 messages—points of origin and termination not shown.	
February, 1943—	None
March, 1943—	
1 message—point of origin and termination not shown.	

	Messages
April, 1943—	None

Total of Sent Paid and Received Collect Messages Interchanged With Bayshore Water & Light Company Shown by Southern Bell Telephone & Telegraph Company's Statements.

1942—	
August	170
September	223
October	167
November	154
December	139
1943—	
January	207
February	172
March	203
April	205

EXHIBIT "I".

The North Shore Corporation.
Report of Traffic for the Year 1938.

Month	Local	Foreign	Total
January	....	..	..
February	....	..	..
March	....	..	..
April	....	..	..
May	....	..	..
June	....	..	..
July	....	..	..
August	....	..	..
September	....	..	..

Month	Local	Foreign	Total
October	3839	51	3890
November	3099	43	3142
December	2734	59	2793
Total for year	9672	153	9825
Percentage to total	98.44%	1.56%	100%

North Shore Corporation.

Report of Traffic for the Year 1939.

Month	Local	Foreign	Total
January	....	..	..
February	2366	63	2429
March	3689	124	3813
April	4438	75	4513
May	....	..	..
June	....	..	..
July	....	..	..
August	4111	68	4179
September	....	..	..
October	....	..	..
November	....	..	..
December	....	..	..
Total for year	14,604	330	14,934
Percentage to total	97.79%	2.21%	100%

The North Shore Corporation.

Report of Traffic for the Year 1940.

Month	Local	Foreign	Total
January	1753	46	1799
February	2155	74	2229
March	3087	66	3153

Month	Local	Foreign	Total
April	2759	75	2834
May	3875	105	3980
June	3830	134	3964
July	4499	174	4673
August	4463	178	4641
September	4105	162	4267
October	4726	175	4901
November	3853	135	3988
December	2937	57	2994
Total for year	42,042	1381	43,423
Percentage to total	96.82%	3.18%	100%

The North Shore Corporation.

Report of Traffic for the Year 1941.

Month	Local	Foreign	Total
January	2725	50	2775
February	2335	30	2365
March	2991	27	3018
April	3977	70	4047
May	6685	107	6792
June	6327	106	6433
July	5328	111	5439
August	7125	41	7166
September	5245	71	5316
October	5516	106	5622
November	4506	14	4520
December	2791	0	2791
Total for year	55,551	733	56,384
Percentage total	98.70%	1.30%	100%

The North Shore Corporation.

Report of Traffic for the Year 1942.

Month	Local	Foreign	Total
January	2592	1	2593
February	2365	1	2593
March	3182	16	3198
April	4020	0	4020
May	3857	10	3867
June	3185	0	3185
July	4279	0	4279
August	3655	9	3664
September	3860	10	3870
October	4278	6	4284
November	3404	0	3404
December	2646	6	2652
Total for year	41,323	58	41,381
Percentage to total	99.86%	.14%	100%

The North Shore Corporation.

Report of Traffic for the Year 1943.

Month	Local	Foreign	Total
January	1776	0	1776
February	1307	25	1332
March	2057	86	2143
April	3378	257	3635
May	4052	395	4447
June	1490	99	1589
July	....	..	to 6/12
August	....	..	..
September	....	..	..

Month	Local	Foreign	Total
October	....	..	..
November	....	..	..
December	....	..	..
Total for year	14,060	862	14,922
Percentage to total	93.9%	6.1%	100%

60 EXHIBIT "J".

R-1890

For release Saturday, October 17, 1942.

U. S. Department of Labor

Wage and Hour and Public Contracts Divisions

New York, New York

Status of Office Buildings Under Wage-Hour Law Explained.

Questions have been raised concerning the application of the Fair Labor Standards Act to maintenance employees working in office buildings in which no goods are produced for interstate commerce and in which none of the tenants there engages in transactions in interstate commerce.

L. Metcalfe Walling, Administrator of the Wage and Hour Division, U. S. Department of Labor, explained today that the Division would consider the Act inapplicable to maintenance employees in these situations, since it is unlikely that the Courts would find such employees within

the scope of the Act. Typical questions involved relate to those office buildings in which some companies rent space to house part of their clerical or office staffs, but which conduct their production and commercial activities elsewhere. In the opinion of the Wage and Hour Division such buildings are not in interstate commerce and so not covered.

Last June the Supreme Court in *Kirschbaum v. Walling,* 62 Sup. Ct. 1116, held that maintenance employees of a loft building in which the tenants produced goods for interstate commerce are covered by the Act. The Division has held that maintenance employees in buildings in which the tenants carry on interstate commerce activities are similarly covered by the Wage and Hour Act. *For purposes of enforcement the Administrator has adopted the rule that he would regard 20% as the test of whether a substantial part of the building is devoted to interstate commerce activities.* If less than 20% of the building is occupied by tenants therein engaged in interstate commerce or in the production of goods for interstate commerce, the Division will take no action to apply the Act to the maintenance employees. (Italics added.)

EXHIBIT "K".

Analysis of Use of Road June 6th to June 21st, 1943, by Cars Bearing Foreign Licenses, by States.

Alabama: 1C7056 (6/6); 4-13-308 (6/6); 61C601 (6/6); 1C37056 (6/13).

Arkansas: 134-461 (6/4); 134-051 (6/5).

California: 147307 (6/6).

Connecticut: 211929 (6/19).

D. C.: 147763 (6/4).

Georgia: EX269-69 (6/4); EX269-66 (6/4); C49134 (6/5); X90180 (6/5—6/21); D4795 (6/5); E51032 (6/6—6/7); C4152 (6/6); A75-666 (6/6); X37608 (6/6); A14622 (6/7—6/12—6/17); F13080 (6/7); A14634 (6/7); E11960 (6/7—6/21); EX809 (6/9); D90071 (6/11-6/18); E33161 (6/11); C85332 (6/12) E95603 (6/13); A74950 (6/15); E38988 (6/16); E45714 (6/18); EX22611 (6/20); C43491 (6/20); C48422 (6/20); C68558 (6/20); D19604 (6/20); X9482 (6/20).

Illinois: 949628 (6/4); 184425 (6/6).

Indiana: 90397 (6/6—6/13).

Kansas: 34914 (6/10—6/12) K40950 (6/19).

Louisiana: 78048 (6/4); 36628 (6/5—6/10—6/14); 149894 (6/6); 102776 (6/20).

Maryland: 190491 (6/7—6/12); 470601 (6/20—(2)).

Massachusetts: 431086 (6/10).

Michigan: EP3097 (6/4); RT1558 (6/20).

Missouri: 795350 (6/7); 811372 (6/9); 344894 (6/12—6/18).

North Carolina: 743078 (6/9—6/11—6/13—6/17); 537130 6/10—6/13); 206210 (6/13); 174205 (6/16); 137289 (6/19); 658292 (6/20); 209805 (6/21).

New Jersey: S/C-74-H (6/14); C/S-74-H (6/16).

New York: R4L64 (6/4); 7R7326 (6/7); M/D-9726 (6/20).

Ohio: PU708 (6/6).

Oklahoma: 32651 (6/10); 134125 (6/20).

Oregon: 369935 (6/13).

Pennsylvania: GH752 (6/13—6/20).

South Carolina: D30590 (6/6—6/7—6/12); D901-071 (6/6); C105071 (6/16); C-1727 (6/10—6/12) E9874 (6/11).

South Dakota: 4-133-908 (6/6).

Tennessee: 233379 (6/5); 113215 (6/6—6/17); 13892 (6/9; 136582 (6/15—6/20); 426585 (6/20).

Texas: 314973 (6/9); E9987 (6/11); 125608 (6/14); 174224 (6/18); 174205 (6/20).

Virginia: 558434 (6/4—6/7); 28-339 (6/6); 64735 (6/15—6/17); 218168 (6/20).

EXHIBIT "L".

The following excerpts are taken from

"Annual Reports—War Department.

77th Congress, 2d Session. House Document No. 506. Part 2.

Report of the Chief of Engineers, U. S. Army, 1941.

In Two Parts—Part 2."

(Page 603.)

Waterway Between Beaufort, S. C., and St. Johns River, Fla. (Cumberland Sound to St. Johns River Section).

Comparative Statement of Traffic.

Year	Vessel Traffic Tons	Rafted Tons	Total Tons	Passengers, Recreational*
1938	159,296	2,361	161,657	24,300
1939	267,832	1,044	268,876	15,900
1940	287,355	52	287,407	.....

* * * *

(Page 604.)

* * * *

Through Traffic 1940.

Northbound—Total ..... 144,450 tons

Southbound—Total ..... 75,164 tons

*Beginning 1940 passengers on charter and excursion boats only are included.

EXHIBIT "M".

North Shore Corporation.

Analysis of Foreign and Other Cars Using Road for the Months Indicated.

	Total Cars	Foreign Car	% of Foreign Cars
March, 1937	3083	120	3.9%
April, 1937	2722	78	2.9%
September, 1937	4041	200	4.9%
October, 1937	3637	96	2.6%
September, 1938.....	3642	39	1.07%
	17,125	533	3.1%

EXHIBIT "N."

Overstreet v. North Shore Corporation.

June 22, 1943.

Registrants at Ribault Club—[1]

From February 12, 1942, through March 31, 1942:

Out of State	Florida (Jacksonville)
88 persons	5 persons

Registrants at Fort George Club—[2]

1938-1939 Season Beginning December 20, 1938:

Out of State	Florida
45	1

1939-1940 Season Beginning December 20, 1939:

Out of State	Florida
52	1

1940-1941 Season Beginning December 20, 1940:

Out of State	Florida
59	4

1941-1942 Season, Beginning December 21, 1941:

Out of State	Florida
14	5

1942-1943 Season, Beginning December 18, 1942:

Out of State	Florida
9	2

[1] Compiled from registry of club which covers season of Winter 1942 only.

[2] Compiled from registry of club covering all seasons shown.

67 TRANSCRIPT OF PROCEEDINGS.

(Title Omitted.)

Before His Honor, Dozier DeVane, one of the Judges of the above-styled Court (without a jury), at Jacksonville, Florida, commending on Wednesday, June 23, 1943, at ten o'clock a. m.

Appearances:

Dillon Hartridge, Esquire, and Lucien Boggs, Esquire, appearing on behalf of H. T. Overstreet, et al., Plaintiffs.

John E. Lake, Esquire, appearing on behalf of the plaintiffs, William J. Scott, Rubin Knox and W. M. Young;

W. Gregory Smith, Esquire, and Roswell P. C. May, Esquire, appearing on behalf of the Defendants.

Proceedings.

The Court:

As I understand these are the cases of Overstreet, et al. vs. North Shore Corporation, and Scott, et al, vs. the North Shore Corporation, and that they have been consolidated for the purpose of trial; is that correct, gentlemen?

Mr. Hartridge:

That is correct.

Mr. Smith:

That is correct.

The Court:

Are you ready to proceed?

Mr. Hartridge:
The plaintiffs are ready.

Mr. Smith:
The defendants are ready.

The Court:
You may proceed and call your first witness.

* * * * * * * * *

Mr. Boggs:
Your Honor, the plaintiffs in both cases and the defendants in both cases have joined in a stipulation of fact here, which I am now offering, with the understanding on the part of counsel that during the pendency of the trial, either party may move to strike any portion of the evidence revealed by this stipulation which he deems to be immaterial and irrelevant. Is that correct, Mr. Smith?

Mr. Smith:
That is correct.

The Court:
It will be received and filed under that condition.

* * * * * * * * *

LHB WAS

Mr. Smith:
The defenses are:

1. That there is no substantial amount of interstate traffic over the toll road;

2. That there is no substantial amount of interstate traffic over the telephone line;

3. That under the exception in the act of telephone companies having less than five hundred stations, that the telephone line employes are not covered because this line has less than five hundred stations. I think counsel have attacked none of these defenses, so I take it all are to be treated as good before this Court at this time, which would leave the telephone line out for lack of sufficient stations to bring it within the Act.

The fourth defense is the matter of general denial of material allegations of the complaint.

Now, in order to get the point before the Court at this time, we move to strike out from the stipulation all the evidence thereto attached concerning the foreign license traffic over the highway as distinguished from interstate traffic as to which there is nothing in the stipulation, on the ground that the mere fact a foreign car may have proceeded over the road is no evidence that that foreign car was engaged in interstate commerce.

Mr. Boggs:

If the Court please, in response to that motion, in the first place, I think inasmuch as there is no jury here, that the Court will probably want to take that and other evidence for exactly what the Court thinks it is worth after viewing the case as a whole, and in the second place we are supporting that stipulation by certain oral testimony. I don't claim that we are going to be able to produce exact figures, but we will support that clause of the stipulation with certain testimony that not only were there a number of cars carrying foreign licenses tags, but that in a good many instances, it turned out the people operat-

ing such cars were actually traveling in interstate commerce, so that I think that counsel's motion at the present time is entirely premature.

The Court:

The Court will overrule the motion, and give you an exception.

* * * * * * * * *

Mr. Smith:

I wish to make this admission in the record. The defendant admits that at all times involved in this suit, there has been a substantial amount of interstate commerce passing through the intra-coastal waterway over which the Sister's Creek draw-bridge extends.

The Court:

All right. You may call your first witness.

Mr. Boggs:

We will call Mr. Pereira.

75 GEORGE ARNOLD PEREIRA, having been produced and first duly sworn as a witness on behalf of the Plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Boggs:

Q. Please state your full name, and spell the name for the reporter.

A. My name is George Arnold Pereira.

Q. And how do you spell your last name?

A. P-e-r-e-i-r-a.

Q. And where do you live?

A. Eastport, Florida. My mailing address?

Q. That is enough. Eastport, Florida?

A. Yes, sir.

Q. And what do you do for a living?

A. At the present, I am toll keeper and telephone operator.

Q. For what company?

A. For the North Shore Corporation.

Q. The defendant in this case?

A. That is right.

Q. How long have you worked for that corporation, Mr. Pereira?

A. I believe 1940. During April, 1940. I am not positive of the day I started.

* * * * * * * * *

Q. In November, 1940, you became a night man at the No. 1 toll gate?

A. That is correct.

* * * * * * * * *

Q. And how long did you remain as night man at the No. 1 toll gate?

A. I believe October 16, 1941.

Q. 1941?

A. Yes, sir.

Q. And who, during that portion of your service, was the day man?

A. Mr. C. V. Holder.

Q. Mr. C. V. Holder?

A. Yes, sir.

Q. And you say on October 16, 1941, you became day man at the No. 1 toll gate?

A. That is correct.

Q. And at that time Mr. Holder's connection with the company was severed?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, as a toll collector, before you became day man, what were your duties? Just what were your duties?

A. Well, at Eastport?

Q. Yes, sir.

A. For the sale of tickets for toll of the road only.

Q. Well, did you have any duties with respect to the telephone system?

A. No, sir.

Q. You didn't handle any calls? There was no station at Eastport, was there?

A. The station at Eastport is merely used for the purpose of the road only. They do not conflict with the telephone at the store located there inside.

Q. You didn't have anything to do with the handling of that telephone, though, at all?

A. No, sir.

Q. All right. Now, when you became night man, at the No. 1 toll gate, did you have anything to do with the telephone?

A. Yes, sir.

Q. What did you have to do with it?

A. I acted as telephone operator during the night.

Q. Now, suppose someone from Jacksonville, or from out of the state, for that matter, put in a call for some one further down the line of that road than toll gate No. 1, did you have something to do about putting that call in?

A. Yes, sir. I found out the party calling. Called the station they were calling, and found out if they would accept the call.

Q. Yes.

A. And placed the call on the register.

Q. Did you perform like services with reference to outgoing calls?

A. Yes, sir.

Q. Now, when you became the day man at Eastport, did you take on any other duties in addition to those that I have just described?

A. No, sir.

Q. Did you have to keep any records for the company?

A. Merely my daily report sheet.

Q. Did you have anything to do with keeping the time records of the men?

A. No, sir.

Q. Who worked for the company?

A. No, sir.

Q. I am asking you about the day man at the toll gate No. 1. Did you or not keep certain time records?

A. At the toll gate, I did.

Q. You misunderstood me, then, when I asked you before.

A. I thought you were asking about Eastport.

Q. All of these questions I am asking you now are are about your time as day man at No. 1?

A. Yes, sir.

Q. So you did keep certain time records?

A. Yes, sir.

Q. Now, I hand you a book entitled "Time Book, Weekly", which is marked "Week ending June 19, 1941, to—", and then there is no date filled in after the word "to". Will you examine that book beginning with October 16th, the date October 16th, and state who made those entries in the book?

A. I did.

Q. You did?

A. Yes, sir.

Q. Now, on what basis—On what information did you make out those weekly sheets which you find in this book?

A. By information from my superior, and copying each at the time I was instructed of it. But I placed it as instructed. If not, I copied from C. V. Holder's records before that time.

Q. Now, that book is followed by another book entitled just as the other book was, but beginning with the date of January 1, 1942. Please tell me who made the entries in that book?

(Handing a book to the witness.)

A. I did.

Q. You did?

A. Yes, sir.

Q. And that, in turn, in which the opening date is December 17, 1942, will you please state who made the entries in that book?

A. I did.

Q. You did?

A. Yes, sir.

Q. It appears in each of these books that there is a segregation of the names of employes into two groups, separated by a space in between them. What was the purpose of that separation?

A. The toll keepers and the bridge tenders were paid on a weekly basis.

Q. Yes?

A. The work crew was paid on an hourly basis.

Q. How did you get the time of the work crew?

A. It was forwarded to me by the foreman of the work crew.

Q. It was forwarded to you by the foreman of the work crew?

A. Yes, sir.

Q. And who were the foremen during the period of your keeping these books?

A. Mr. William Stewart.

Q. One of the plaintiffs in this case?

A. Yes, sir. And now Joseph Lang.

Q. Lang?

A. Yes, sir. He is acting under the capacity of foreman.

* * * * * * * * *

Q. I hand you a document—a printed form rather than a document—a printed form, headed "North Shore Corporation, Heckscher Drive Daily Report Summary", and this particular one that I show you is dated 5/31/43.

(Handing a document to the witness.)

A. Yes, sir.

Q. Have you seen that report before?

A. Yes, sir.

Q. The signature on it is your signature, is it not, Mr. Pereira?

A. That is correct.

Q. Is this the type of report that you regularly made out as a part of your duties as a day man at Number 1?

A. That is correct.

Q. And was always the same form of report, was it not?

A. That is right.

Q. I notice—strike that.

Mr. Boggs:

I will offer this document as—strike that, please.

Q. Attached to, and immediately below the document that you just examined, I find three smaller daily reports

signed by various persons as toll collectors. Now, what are those smaller reports immediately underneath the main report?

A. Those are other toll keepers' reports.

Q. Were they supposed to make those every day, and clear them through you?

A. Daily and nightly.

Q. Daily and nightly?

A. Yes, sir.

Q. And then this daily report that I first showed you represents a compilation made by you, both of the work of yourself, as toll collector, and of all the other toll collectors?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Mr. Boggs:

I will offer this May 31st, main report, with the three others, merely as a sample of the form of the report, and I may say off the record, if Mr. Smith wishes to substitute a copy of this so as to keep their records straight, he may do so, and it will be entirely agreeable to us.

Mr. Smith:

No objection. That is the form which is described in the stipulation. The stipulation says it was kept in that way, but I think it is well to have a sample before the Court.

The Court:

It will be received in evidence, and you may substitute a copy for the original if you so desire.

. . . The instruments last above referred to were received and filed in evidence and marked Plaintiff's Exhibit No. 2. (Appears at Pages Nos. 317, 318, 319 and 320.)

Mr. Boggs:

Q. Now, Mr. Pereira, in the lefthand column of that, the extreme lefthand column of the second block of figures given on this main daily report—I think I would like the Court to see that exhibit, as I think it will enable you to follow it a little better of what I am bringing out now. (Handing a document to the Court.)

Q. —there is a heading "ticket sales", and the extreme lefthand column under that shows the word "misc." meaning miscellaneous. Now, what information was put into that column marked miscellaneous?

A. Sale of bicycle tickets and passenger tickets.

Q. For foot passengers, you mean?

A. No, sir, on passes issued by the company, such as courtesy passes, and like a pass which covers the immediate family of the party carrying the passengers. If that is a passenger other than for the family, there is a small charge for the passenger.

Q. So that does represent—this "miscellaneous" represents paying traffic?

A. That is right.

Q. But not ordinarily automobile traffic?

A. That is right.

Q. Now, the next column a little over to the right is headed "party". What information is that designated to cover?

A. I am at a loss to say what that is.

Q. You do not know what that is?

A. No, sir.

Q. The next column is headed "Pass".

A. Those were the total amount of passes.

Q. Of every kind; both courtesy and—

A. Courtesy and right of way.

Q. Courtesy and right of way?

A. Yes, sir.

Q. Now, skipping on over immediately to the right of that same group of information is a column headed "Total cars. " How did you make up the figure in that column?

A. The total cars?

Q. The total cars, yes, sir.

A. By totaling our touring cars, our roadsters, our trucks, and passes and miscellaneous.

Q. So that, even though it was a bicycle, it would be classified as a car under that system of compilation?

A. That is correct.

Q. If you wanted to find out the true number of motor vehicles that passed over that road on a given day, how would you go about finding that out, and with no other information except that, Mr. Pereira?

A. By taking the touring cars, roadsters, trucks and passes and totaling them up only.

Q. Only those?

A. Yes, sir. Or by deducting the miscellaneous from the total cars.

Q. Well, now, I find that in some of these other daily reports that there are figures under the column headed "Party". For instance, the report similar to the exhibit just introduced in evidence, which is dated January 31, 1941, the word "Party" has under it, for Number 1, it has 2, and for Numbers 3 and 4, it has five, a total of seven. Now, you say you don't know what that means?

A. No, sir. I have never been instructed as to that.

Q. But if you added together the column for trucks, roadsters and touring, and then you say you have to add the passes, in, too?

A. Passes, yes, sir.

Q. The pass has no information except just an automobile that was traveling under a pass; is that what it means, Mr. Pereira?

A. That is true.

Q. And that is regardless of the number of passengers or anything of that sort, is it?

A. Yes, sir.

Q. That column has nothing to do with anything except the fact there were so many automobiles traveling under the pass?

A. That is true.

Mr. Smith:

At this time, are you and Mr. Lake prepared to stipulate that the compilation, Exhibit I to the stipulation, is compiled by the use of column which is headed "Total cars" and by the use of the column which is headed "foreign"?

Mr. Boggs:

Yes, sir.

Mr. Smith:

The Court will note that stipulation?

The Court:

Yes, sir.

Mr. Boggs:

Q. Now, immediately following the column reading "Total cars", there is a column headed "foreign". For what purpose did you use that column during the time that you were keeping this record?

A. I didn't use that column much, to my knowledge.

Q. Now, did you have any information or instructions given you and, if so, by whom, when you undertook the duties of compiling this record, as to what use you were to make of that column marked "foreign"?

A. I had no instructions at the time I started those reports.

Q. Did anyone give you any information concerning that column?

A. Outside of during the time while I was on duty at Eastport and No. 1 toll house at night, I was told it was not necessary to keep a report of foreign cars.

Q. When you became, yourself, a record keeper, did anyone give you any instructions about the use of that column?

A. No, sir.

Q. Mr. Pooser was then manager at that time?

A. Yes, sir.

Q. He didn't give you any instructions about that, Mr. Pereira?

A. Of making the sheet?

Q. Of the use of the column headed "foreign"?

A. No, sir.

Q. Did you have any information passed on to you by anyone else about the use of that column?

A. Outside of at the time I was broke in, that it was not necessary.

Q. Who gave you that information?

A. Mr. Holder.

Q. He was the man at No. 1, the day man?

A. Yes, sir.

Q. Before you?

A. Yes, sir.

Q. And he was the man breaking you into your job?

A. That is right.

Q. So that information you said had already been given you when you first went to work at Eastport?

A. That is true.

Q. You were told it wasn't necessary to do that?

A. Yes, sir.

Q. And just what were you told? That the company had given instructions on it or merely that it wasn't necessary to do it?

A. That it was not necessary to list foreign cars; just that.

Q. Now, actually, during your period of service, during the latter portion of your period of service, you have gotten some instructions, have you not?

A. I have.

Q. When did you get those?

A. I believe February or March.

Q. Of what year?

A. Of this year.

Q. Of this year?

A. Yes, sir.

Q. Who gave you those instructions?

A. Mr. Pooser, my manager.

Q. Mr. Pooser?

A. Yes, sir.

Q. What did he tell you to do with reference to that column marked "Foreign"?

A. My first instructions were to note all foreign cars, and pass the word on to all toll keepers, and if we recognized any of the foreign cars as local traffic to stipulate below that so many of the foreign cars were local traffic.

Q. You mean to specify that down below?

A. Yes, sir.

Q. As to how many were local traffic?

A. No, sir. Boys from the airports or someone like that, that were in the army or navy, which we considered local traffic with foreign licenses on their cars.

Q. So that during the period—up to the time when Mr. Pooser gave you these instructions, which you say was in February or March of this year, did you follow up the other toll collectors in any way and insist on or require them to furnish foreign car information before Mr. Pooser gave you these instructions?

A. I did not.

Q. You did not?

A. I did not, no, sir.

Q. So I gather then that, broadly speaking, you just didn't pay any particular attention to that subject, in view of what Mr. Holder had told you?

A. Yes, sir.

Q. And if, during that period from October, 1941, up to the time of Mr. Pooser's new instructions, there were any foreign cars showing on your reports, how did they get in there, Mr. Periera?

A. By other toll keepers placing them on their reports.

Q. Yes.

A. Or, if they are on my report personally. I can't answer that, for my instructions were it was not necessary.

Q. But, as a matter of fact, at your own toll gate, did you or did you not watch out for foreign cars during that period before you got your new instructions?

A. I did not.

Q. You didn't pay any attention to that?

A. No, sir.

Q. Of course, there were foreign cars going by, were there not?

A. Yes, sir.

Q. Well, then, would you say that the foreign car record, such as it is, during that period from October of 1941 up to the time when you got your new instructions,—would you say that during that time that foreign car record on these reports was complete or incomplete?

A. Incomplete.

Q. Incomplete?

A. Yes, sir.

Q. And are you prepared to say whether the actual number of foreign cars passing by your toll gate during that period was greater or less than the number that were recorded during that period on these reports?

A. During that time they were greater.

Q. They were greater?

A. Yes, sir.

Q. And during the time when you were night man at Eastport, was the same thing true then?

A. I was not night man at Eastport.

Q. Night man at toll house No. 1,—was the same thing true then? Did you watch out for foreign cars when you were night man there?

A. I did not, no, sir.

Q. But there were foreign cars going by, were there not, Mr. Pereira?

A. That is true.

Q. Was the same thing true when you were toll keeper at Eastport?

A. Yes, sir.

Q. During all three of those periods, and all the way up to the time when Mr. Pooser gave you those new instructions, you made no effort to record the foreign cars?

A. That is correct.

Q. And please state—Are you able to make any sort of an estimate as to the true volume of traffic, so far as concerns cars bearing foreign licenses during your period of service for the company?

A. Merely my own opinion.

Q. That is based simply, not on a count, but on just general observation?

A. That is correct.

Q. Now, during your period of service for the company and prior to Pearl Harbor, that is December 7, 1941, what would be your best and most careful estimate as to the proportion of total automobile traffic that was paying traffic—paying traffic, I say—that would be represented by foreign licenses?

A. Well, sir, I was not at either toll house for a complete year. Do you mean yearly?

Q. You can make any kind of an estimate, you wish. I was merely asking for the proportion. I didn't want the

number of cars. I wanted the proportion. In other words, the proportion, one to ten, one to five, one to twenty?

A. During the hunting and fishing season, I would say it would run at least twenty or thirty per cent.

Q. It would run at least twenty or thirty per cent?

A. Yes, sir.

Q. What do you term the fishing season, broadly speaking, Mr. Pereira?

A. Well, sir, it is from the latter part of March until October.

Q. Until October?

A. Yes, sir.

Q. You think that the proportion of paying traffic that was represented by foreign licenses during those months of the year would run, you say, somewhere from twenty to thirty per cent?

A. My reason for that is, that there were numerous Georgia cars coming over the road.

Q. In the case of those fishing parties that were using the road, and bearing foreign license tags, were you able, in some instances, to tell whether or not those people were actually making an interstate journey?

A. At certain times, by inquiries at the toll house for the historical site at Ft. George only showed they were tourists.

Q. You could tell from the nature of the questions which were asked?

A. Which were tourists.

Q. Coming through there were tourists?

A. Yes, sir.

Q. Where would these fishermen—State some of the places they went down the line to, first?

A. Eastport, New Berlin, Brown's Creek, Clapboard Creek, Sister's Creek, Ft. George.

Q. That, you say, was what brought a good deal of the traffic in there?

A. Yes, sir.

Q. Could you tell the fishermen by the equipment they would carry along with them, and also by inquiry; is that correct, Mr. Pereira?

A. Some distinction, you can tell fishermen; and others you can't.

* * * * * * * * *

The Court:

How far do you expect to extend this inquiry as to the relative division of the traffic as between that which may be classed as intrastate and that which may be classed as interstate?

Mr. Boggs:

If the Court please, I am really through with that line of inquiry with this paticular witness. Naturally, I expect to use some other witnesses on that same line. In other words, it is plaintiff's contention here that these exhibits in the stipulation put in by the defendant, do not in any sense of the word constitute a full, true and complete record of the foreign cars. It is also our contention that that same exhibit, Exhibit I, has an erroneous statement under the caption of "Total cars", because there are columns included in that total that actually do not afford a basis of comparison. For instance, that miscellaneous column includes figures other than automobiles. And then passes. We find that the traffic of people who have passes is obviously not fair for comparison purposes, because all of those people that have passes are practically all local and commute mostly backward and forward over the road, and contribute to the repair and upkeep of the road, but we expect to put in some other testimony about traffic that goes over the road.

The Court:

Well, you have a stipulation here, containing Exhibit I, which shows at least the minimum amount of interstate traffic that moves over this road?

* * * * * * * * *

The Court:

While I am perfectly willing to sit here and permit you gentlemen to make a record on the question, it is my opinion that the refining of the percentage of traffic that passes over this road and over these toll bridges is unimportant in this case; this being a public highway and being used as such and the time of the employes being devoted as shown by the record thus far to the operation of that highway, it becomes immaterial whether the percentage of interstate movement is five per cent or twenty-five per cent, in the opinion of the Court.

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The Court:

So far as counsel for both sides are concerned. You do not have in this case, however, the question that you had in the Jacksonville Paper Company case, or the question we had last week in the Atlantic Ice Company case here, in which the company was itself engaged in two classes of business.

Mr. Boggs:

Yes, sir.

The Court:

One strictly intrastate and one that was something that was interstate, and now where that type of operation is carried on, then the question of the interstate business, or particularly the extent to which a particular employe

may be engaged in and works in interstate commerce becomes important, but when the entire business is a railroad, a toll road, or a toll bridge or telephone company, or something of that character, whose facilities are used in interstate commerce, it seems to me that the question as to the percentage of the relative traffic,—that which is interstate or that which is intrastate—becomes unimportant. As some of you know, I have had quite some experience in that field, and have given the question long and serious consideration, so in making this statement, I am not making it without having dealt with the subject before, although I do recognize that the Fair Labor Standards Act presents to the Courts, lawyers and litigants questions that have not been presented in similar litigation.

Mr. Boggs:

In view of the comment you have just made, I shall try to shorten the inquiry just as much as I possibly can, and I think we can shorten it.

Mr. Smith:

Let me see if I can ascertain where we are here. The Court has not heard us on the subject. There are some cases material to be considered. Most of all our own case is material to be considered in the Supreme Court of the United States. I think I have read to the Court from the opinion of the Supreme Court the phrases on which we would place heaviest reliance, and I attempted to emphasize those phrases. The Supreme Court said in so many words, and without qualification, that if these people could prove there was extensive movement in interstate commerce over this road that they could recover, but we did have to concede and have conceded in the stipulation that United States mails go over this road. I suspected that it could be established. I have no doubt of it, that some of the letters carried by the letter carrier are mov-

ing between states. If we are to deal with percentages, the percentages might or might not be low. I have no information with regard to that. It would be an utterly hopeless proposition for us to state to the Court that a car moving between states never passed over the road, and there is no use pretending we can establish such a point. It is there, and we must be confronted with it, and if the Court is going to rule that the movement of one car in interstate commerce over this road means that all of these employes must be paid under the Wage and Hour Law for all of the weeks of their employment, even though in some weeks a car with a foreign license on it, or a car moving between states, might not have passed over the road, then we would be wasting time here to go on with this trial.

The Court:

The Court does not hold that a single incidental movement of one car over this road would make this highway a carrier in interstate commerce. That has been established, as you know, in connection with the other businesses that might be classed as intrastate or interstate commerce. However, if what you have in mind is that the company is liable only for those days on which interstate movement might pass over that road, and only for so much of the day or so many hours of the day as the interstate movement may bear to the intrastate movement, the Court will not go along with you on that theory. Do I make myself clear?

* * * * * * * * *

We will take a recess until two o'clock.

. . . And thereupon a recess was taken to two o'clock p. m. of the same day, Wednesday, June 23, A. D. 1943.

Afternoon Session.

. . . And thereupon, at two o'clock p. m., Wednesday, June 23, 1943, the hearing was resumed pursuant to recess of morning session.

The Court:
You may proceed, gentlemen.

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Mr. Boggs:
If the Court please, we have one witness here that will take but a few minutes time, and who has an appointment with the doctor. He will take only about five minutes, or would you prefer that we finish with Mr. Pereira first, and then put him on. This man has a doctor's appointment later on in the afternoon. He is not one of the plaintiffs in this case.

The Court:
Is it agreeable to you?

Mr. Smith:
We will make no objection to that.

The Court:
All right.

Mr. Hartridge:
Mr. Berrier.

102 W. C. BERRIER, having been produced and first duly sworn as a witness on behalf of the plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Hartridge:

Q. Please state your name?

A. W. C. Berrier.

Q. How do you spell your last name?

A. B-e-r-r-i-e-r.

Q. And what is your occupation?

A. Well, I am primarily an ice cream manufacturer, but I have several little side lines, among which is dealing with horses.

Q. Do you or not own a stable at New Berlin, Florida?

A. Let us get this straight at the start. I personally do not, but I am manager and president of the company that owns it. The company's name is Berriers', W. C. & J. B., Inc., and I am president and manager of that company.

Q. When was that stable built at New Berlin, Florida?

A. It was built in 1942; summer of 1942.

Q. What is the greatest number of horses you have had there at one time?

A. Twenty or twenty-one. I disremember it.

Q. Did you bring those horses in there yourself?

A. I brought part of them in.

Q. Where did you bring them from?

A. I brought some from locally and some of them from Georgia.

Q. How did you bring the horses down from Georgia?

A. In a trailer.

Q. Where do you buy your food for the horses?

A. I buy that locally.

Q. It is delivered to you at the stable out there?

A. Part at least is delivered and I transport a part of it myself.

Q. And that is bought from feed dealers here in Jacksonville?

A. Yes, sir.

Q. That is all.

Mr. Boggs:

Wait a minute.

Mr. Hartridge:

Q. You have, have you, transported horses from points outside of the State of Florida to points on the Bay Shore Road more than once, or just one time?

A. Well, several times.

Q. How many times would you say since 1942 has that occurred, Mr. Berrier?

A. I would have to figure a little bit to tell how many times, but all of my best horses came from out of the state—I have shipped six or eight.

Q. Was all of that during 1941?

A. I believe all of it was during 1942. If you will excuse me—I believe there were one or two brought down in 1941.

Mr. Boggs:

In 1941?

A. Yes, sir.

Mr. Hartridge:

That is all. Your witness.

Cross Examination.

By Mr. Smith:

Q. What is the name you have called the stable that is owned by W. C. & J. B. Berrier, Inc.?

A. Well, now, let me see. We call that, I believe, Berriers' Pure Bred Breeding and Riding Ranch.

Q. And what is the more active at the ranch?

A. At the present time the more active is breeding horses, but before the gas rationing came on, we were also running a riding academy in connection with the breeding.

Q. You say you brought six or eight horses down to your place from Georgia?

A. Yes, sir.

Q. One horse to a truck?

A. Well, as I remember, I brought one most of the time, and a few times I brought two; maybe once or twice I brought two.

Q. Did you carry any horses from your ranch back up to Georgia?

A. I carried one horse, as far as I remember now; I carried one horse I know definitely.

Q. Is it correct, then, that the grand total of trips between your ranch and Georgia would be nine trips?

A. I wouldn't say definitely nine. I would say from eight to ten.

Q. Mr. Berrier, you have recently been severely injured, have you not?

A. Well, they tell me so.

Q. You were unconscious for how long?

A. I couldn't even tell you that.

Q. Was it a matter of several weeks?

A. I suppose it was.

Q. Was your head not severely injured?

A. That is what they say.

Q. What did they say about the injury to your head?

A. They tell me that my—I had a brain concussion and a few fractures, a few skull fractures.

Q. A few skull fractures?

A. Yes, sir.

Q. What was the route followed in bringing the horses from Georgia to your ranch?

A. Well, I followed two main routes. One by way of Waycross and the other by way of Lake City.

Q. As you came in to your ranch, what route was followed?

A. We came out Main Street to Heckscher Drive, and from Heckscher Drive to the ranch.

Q. To toll house No. 2, and south to the ranch?

A. Yes, sir.

Q. You made a maximum of not over ten trips over a period of two years?

A. I don't think more than ten.

Mr. Smith:
I think that will be all.

Mr. Hartridge:
No further questions.

The Court:
Come down, please.

(Witness excused.)

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LHB WGS

108 GEORGE ARNOLD PEREIRA, having been previously produced and first duly sworn as a witness on behalf of the plaintiffs herein, resumed the stand and testified further as follows:

Further Direct Examination.

By Mr. Boggs:

Q. Mr. Pereira, I hand you a circular entitled "The Heckscher Drive" with a map appearing on the face of the circular.

(Handing a document to the witness.)

A. Yes, sir.

Q. Have you ever seen such a circular as this before?

A. Yes, sir.

Q. How did you come to see them?

A. We have them at the toll house.

Q. For what purpose?

A. Distribution to the public.

Q. Distribution to the public?

A. Yes, sir.

Q. That was during what period of time that you say these circulars?

A. Ever since I have been connected with the company.

Q. You still have them up there now?

A. Yes, sir.

Q. Did you ever see them any other place except the toll house?

A. They have been delivered to other places?

Mr. Boggs:

Mr. Smith, I understand that you will concede that they were distributed to the Jacksonville Tourist and Convention Bureau?

Mr. Smith:

They were there, and were delivered by the Bureau to whomsoever was interested in fishing, yes, sir.

Mr. Boggs:
We offer this circular in evidence, if the Court please.

The Court:
Any objection?

Mr. Smith:
No objection.

The Court:
Let it be received in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Plaintiff's Exhibit No. 3.

Mr. Boggs:
Your witness.

Cross Examination.

By Mr. Smith:

Q. Mr. Pereira, in giving your estimate of the proportion of foreign cars, to Florida, to cars bearing Florida license tags, is it possible for you to give any estimate of the proportion of those cars which you could identify as being engaged on a journey from a point outside of the state of Florida to a point inside of the state of Florida?

A. Outside of the fact they do inquire about the historical sites at Fort George Island, I can't say that I could distinguish those.

Q. About how many out of each one hundred cars would you say inquired about historical sites?

Mr. Boggs:
Pardon me, Mr. Smith. Will you make an explanation of that.

Mr. Smith:
I mean in general.

A. It would be hard to say. You mean during the period of time I have been working with the company?

Q. Yes, sir.

A. Well, if they inquire what is on the road, we give them one of those maps and explain the details of the historical site to them in reference to the use of the road.

Q. What I asked you was, how many out of each one hundred cars would make such inquiry of you?

A. I couldn't say definitely out of one hundred cars, as I could not remember.

Q. How many out of each one hundred cars had foreign licenses on them?

A. Well, sir, I would say,—I have noticed twenty or thirty out of a hundred, during the fishing season.

Q. That was during the fishing season, so you say?

A. Yes, sir.

Q. As I understand you, Mr. Pereira, while you were the toll gate keeper at Eastport, you were not instructed to note foreign licenses coming into the Drive at Eastport, and buying tickets from you?

A. No, sir, I was not instructed. I was instructed it was not necessary to note them.

Q. And what is your explanation of the reason for noting such cars on your reports?

A. I have no explanation outside of, if I would put one down.

Q. I hand you your report of May 26, 1940, on the Eastport toll gate, in which you show one foreign car. What is your explanation of your showing that foreign car at that time?

A. At that time which was an early date of my working with the company, and conversation with Mr. Holder, he instructed me not what to put down.

Q. The question is: Why you did show any foreign cars if you were not told to show them?

A. I was not told to show them. I was told it was not necessary to show foreign cars.

Q. You have no explanation at all of your actually showing them?

A. No, sir.

Q. Now, I call to your attention your report of October 18th, 1941, which you made from toll house No. 1, in which you show ten foreign cars. What is the explanation of your showing those ten foreign cars, under the circumstances?

Mr. Smith:

Your Honor, may I have the use of the stipulation just a moment?

A. My explanation there would still be of the same nature. I had no explanation to offer why I did show ten foreign cars outside it was possibly in the matter of haste in writing the report.

Q. Do you mean by that that the report of ten foreign cars was an error?

A. It is possible.

Q. Can you give the Court any explanation as to why you would make an error of that type?

A. Yes, sir.

Q. What is the explanation?

A. Mr. Pooser will agree with me, as he comes out in the afternoon on any certain date, the telephone is ringing, the cars are passing the toll house on one side, and we have to sell tickets on one side, and the other side we have to take them up; answer the telephone and conversation, and make connections with whichever numbers they want, and Mr. Pooser is wanting his report at that time of the day.

Q. And so you would put an extra number of cars on there in haste?

A. No. It is possible I might have set down the zero, and in haste in getting back to the desk to make it up, I possibly in error put the one before it.

Q. Did I understand correctly the last day Mr. Holder was at No. 1, the day before you succeeded him on the day shift at No. 1, that you were with him?

A. No, sir.

Q. Did you see his last day's report?

A. I did not. I had no means of making copies from Mr. Holder's report. In fact, Mr. Pooser will agree with me that we did not have a record out of there to go through.

Mr. Smith:

Q. Let us just leave Mr. Pooser's agreement out. Just answer the questions, please, sir.

A. Yes, sir.

Q. On October 17, 1941, that was the second day on which you were on toll gate No. 1, is that correct; that is the second day on which you were on toll gate No. 1?

A. The 17th?

Q. Yes, sir.

A. Yes, sir.

Q. And you show three foreign cars that day as having been reported by another toll collector?

A. Another toll collector, yes, sir.

Q. And you thought that that was not out of the way at all, in view of your instructions?

A. I recopied his sheet. I did not change his sheet. I recopied his sheet on to that. I had no orders to change the other toll keepers' sheets.

Q. Mr. Pereira, you participated in this suit and became a plaintiff in this suit in September, 1941, did you not?

A. Yes, sir.

Q. You are acquainted with the fact that at about that time, Mr. Holder was discharged, are you not?

A. After that time.

Q. After that time.

A. Yes, sir.

Q. He was discharged October 15, 1941?

A. After the time of the suit, yes, sir.

Q. Can you state whether or not Mr. Holder attempted to cooperate with the employes in connection with the handling of this suit as of that time?

A. He did not.

Q. Are you able to state that?

A. I do not know.

Q. You do not know?

A. No. I am not certain, but in my opinion, and the gathering of the boys with myself, included, we did not go to Mr. Holder in reference to this suit.

Q. And he did not come to you or your counsel, or do you know?

A. That is right.

Q. Do you know?

A. He did not.

Q. Do you know whether he went to your counsel?

A. He did not.

Q. You know that to be true?

A. During the time that we entered the suit? I do not know since that time he is involved.

Q. And you also know, do you not that effective October 1st, 1941, Mr. Pannell was discharged?

A. I know he was discharged, yes, sir.

Q. That was just at the time of the commencement of this suit, that it happened, was it not?

A. Mr. Pannell,—as I asked the reasons why he was leaving the company, and he told me in his own words. I should know, for I was one that was helping the boys.

Q. He told you that was the reason for his discharge?

A. Yes, sir.

Q. He said that was the reason?

A. Mr. Holder was at the toll house at the time he did that.

Q. You did not know that the company was not even advised by Mr. Pannell of the filing of this suit, and did not find out about it until after he had left the company?

A. I did not.

Q. What was Mr. Pannell's attitude toward cooperation in the suit with the employes?

A. Very poor cooperation, as far as cooperation is concerned.

Q. Do you not know that he went to your counsel and offered to cooperate with the employes?

A. I do not know anything about that, no, sir.

Q. I call to your attention, Mr. Pereira, on page 4 of Exhibit I to the stipulation in this case that immediately after the filing of this suit, the report of foreign cars using the Drive dropped off in November to 14, and in December to zero. Is it not a fact that you deliberately failed to keep a record of the foreign cars after the filing of this suit?

A. It is not. As I said, before my instructions were it was not necessary and I had no other instructions from the time.

Q. You have testified that you were told when you went on as the toll collector at the Eastport toll gate that it was not necessary to keep that record?

A. That is right.

Q. Are you quite positive in your recollection that it was then you were so told, and not at or about October 15, 1941?

A. I am sure that it was at the time I started with the company that I was told that it was not necessary, and I assumed at that time the report was for toll tickets

and the total amount taken in each day for the company's business.

Q. Will you explain to the Court why, in every instance, you filled in the report on foreign traffic at the figure of zero instead of leaving it blank?

A. I filled it in at zero for the same purposes as "Party" and all on that report are listed in the same way. Zero would be nothing.

Q. Then you intended to be representing to the office of the company in filing your report with zero on it that there was no foreign traffic?

A. I did not. I had no instructions as to just how to make out the report to start with.

Q. You did fill in zero on all of the reports, did you not, Mr. Pereira?

A. I did, and all of the others have, too.

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Q. State to the Court whether there are at the present time more cars with foreign licenses using Heckscher Drive than there were in 1941 before Pearl Harbor?

A. I do not say that there is more at this time.

Q. What would you say about that?

A. I believe it would be less, although I do not have the actual record.

Q. When you say less, do you mean in proportion to the total cars using the Drive?

A. The proportion to the total cars using the drive.

Q. You think there is a smaller proportion now than there used to be?

A. That is correct.

Q. About to what extent has the total traffic over the Heckscher Drive fallen off from the pre-Pearl Harbor Days to the present time?

A. My opinion is the only thing I could give you.

Q. When you say opinion you mean your best estimate, do you not?

A. Yes, sir.

Q. What would be your estimate?

A. About anyway from one-quarter to one third less, than what we have had.

Q. And what would be your estimate of the proportion of cars bearing foreign licenses after Pearl Harbor to the total traffic?

Mr. Boggs:
Did you ask after Pearl Harbor?

Mr. Smith:
Yes.

A. The foreign licenses, to my opinion, would drop off at least half of that quarter or one-third, for I am taking into consideration that the service men are using a lot of foreign licenses at this time.

Q. Are your records on foreign licenses traffic from February through May of this year accurate?

A. To the best of my knowledge. There are some foreign cars go down the road, which I do not record.

Q. Is there any reason for that, Mr. Pereira?

A. Yes, sir.

Q. What is it?

A. At times I sell a ticket, answer the telephone or make up a report, or try to take up a ticket without seeing the license until after they pass. I do not have the number of the license so I do not record the car.

Q. You have only been recording license numbers since June, June 4th, have you not?

A. That is right.

Q. I inquired of you only up to May. Is your record correct from February through May of 1943?

A. Under the same circumstances, it is possible that there might be a few go by without being record.

Q. You were instructed to record all such cars in February of this year, were you not?

A. To the best of my recollection.

Q. So that neither your record at Eastport, nor from October 15, 1941 to February, 1943, nor from February, 1943, to May, 1943, nor during the month of June, 1943, is correct; is that right, Mr. Pereira?

A. No, sir, I am not saying that. I say I marked those to the best of my ability. I am trying to keep the company's business at the time.

Q. But you tell the Court you think you have missed some of the foreign traffic during all of those periods; is that not so?

A. During all periods?

Q. Yes.

A. Do I understand you to mean from any set time, or during the time I have been connected with the company?

Q. In all of the periods you have been connected with the company you have failed to show all foreign licenses?

A. Oh, yes.

Mr. Smith:
That is all.

The Court:
Anything further, Mr. Boggs?

Mr. Boggs:
That is all.

The Court:
Come down.

(Witness excused.)

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Mr. Hartridge:
We will call Mr. Holder.

122 CARLOS V. HOLDER, having been produced and first duly sworn as a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination.

By Mr. Hartridge:

Q. State your name, please.

A. Carlos V. Holder

Q. Were you ever employed by the North Shore Corporation, Mr. Holder?

A. Yes, sir.

Q. Between what dates were you so employed?

A. I went to work for North Shore—at first the Bay Shore—on October 29, 1936.

Q. What was your position on October 28, 1938? October 24th, 1938?

A. Toll collector for toll house No. 1.

Q. Did you have any position there such as keeping the hours and wages of men on that road?

A. Not at the time that I went to work. I did later on during the period after there for a while.

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A. It corresponds with the hours he worked with the laborers, but it doesn't necessarily mean he wasn't on the road.

Q. You can not take the hours worked by the laborers and compute the hours that Booth was on duty?

A. No, sir, not him, but being foreman over the gang, he was paid a foreman's salary, whether it rained, sun shone, sleet or snow,—he was on the job.

Q. Mr. Holder, there is a telephone line on that road. Do you know of any time when Mr. Booth repaired that line?

A. There was a statement I made up there each week, I turned in a weekly statement of how the labor was worked, and what hours they worked on each particular piece of road, whether the telephone line on Sister's Creek Road, Dunn's Creek Bridge, or not, showing how many hours each man spent in each particular place.

Q. You testified at times the men worked on the telephone line?

A. Yes, sir, times when the pole crew worked on the telephone line.

Q. There were times they worked on various bridges?

A. Yes, they built the telephone line.

Q. They built the telephone line themselves?

A. Yes, sir.

Q. Let me ask you this: How many draw-bridges are there on that road?

A. One at Cedar Creek, and one at Clapboard Creek, which has since been discontinued, and one at Sister's Creek.

Q. Do you know how many bridges altogether on that road?

A. Cedar Creek, Dunn's Creek, San Carlos Creek, Brown's Creek, Clapboard Creek, Sister's Creek, and two others I do not remember which is first. I do not remember that. I think it is Shad Creek, and Hollow, I think are the two names.

Q. Mr. Holder, I would like to ask you about this column here on the daily report of the North Shore Corporation of foreign cars?

A. This particular one I didn't know anything about; that is not my writing.

Q. Did you have any conversation with Mr. Pooser relative to keeping that item on the sheet?

A. The foreign cars right there?

Q. Yes.

A. No, the only conversation I had with him was not to put down too many foreign cars, because he didn't want them to show too many when the slips were turned it.

Q. He didn't want them to show too many when the slips were turned in?

A. Didn't want to show too much foreign travel, and not to put too many on the report, because he didn't want to show too much foreign travel on the reports when they went into the office.

Q. Did any official of the company instruct you that that was the way it should be kept?

A. Mr. Pannell instructed me not to put too many of them on it.

Q. When did Mr. Pannell instruct you that way?

A. I do not remember when it was; a considerable time back. I would say for two years or more back.

Q. Before you left the company?

A. Yes, sir.

Q. And you told Mr. Pereira not to bother with that item on the report?

A. That is right.

Q. Does that report reflect a true and honest estimate of the cars, foreign cars, in proportion to the total cars over that road?

A. No, sir, definitely not.

Q. Mr. Holder, the item for "Passes" and the item "Miscellaneous" would have to be deducted from the figure of the total cars to establish the cars that furnished revenue, would they not?

A. Yes, sir.

Q. The revenue-producing cars would not be pass cars or miscellaneous?

A. Miscellaneous could mean a lot of things. It could mean a bicycle. We used to charge toll on people who drove down on a pass, and later there were passes given

to the holder, but in case he had a friend of his with him, he had to pay the passenger toll for the friend.

Q. But you did not mean vehicles necessarily?

A. It could mean possibly a trailer, which would happen very, very seldom. Wouldn't have one case in a hundred.

Q. Excluding miscellaneous—

A. Miscellaneous also embraces bicycles.

Q. Excluding pass cars and excluding miscellaneous, what percentage of revenue-producing vehicles were from states other than the State of Florida?

A. Well, I should say, in other words, foreign traveling over the road would amount to thirty per cent or better.

Q. On revenue-producing cars?

A. That is right. In other words, paid passengers over the road.

Q. Mr. Holder, did you ever, with your knowledge of conversations on the road, determine whether any of those cars came directly from another state and on to Heckscher Drive, or whether they were cars that came out from Jacksonville or locally?

A. We had a lot of cars come from Georgia. In fact the biggest proportion of foreign cars come out of Georgia, because they were advertised all up through there, and they would come down fishing. If they call it an industry, that road often was used by fishermen, entirely amusement and things of that character; sportsmen from up there, up and down the Georgia coast as well as the Florida coast, and I would say the biggest proportion of the foreign trade would come in from Georgia, and they all advertised through the Convention and Tourist Bureau, with folders and advertisements of Bay Shore and Heckscher Drive, and the Tourist and Convention Bureau were giving out little courtesy slips entitling the bear to a reduction of twenty-five per cent in the toll.

Q. Were those slips turned in to the toll house?

A. Yes, sir, and turned back to the office showing where the twenty-five per cent reduction went.

Q. And the Tourist and Convention Bureau were furnished those slips?

A. Given to patrons, yes, sir.

Q. From out of the state?

A. That is right, and also literature placed in hotel advertising, the same thing.

Q. You were on toll gate No. 1?

A. Yes, sir.

Q. And every phone call that went out passed through your switchboard, did it not?

A. Yes, sir.

Q. During the time in 1941—1942, when they had a phone at Sister's Creek Camp, what would you say—how often would you say the average of a long distance call would be?

A. Well, I do not know. I wouldn't say. The percentage actually of long distance calls was very small. However, there were lots of telegrams that came in there that I would have to copy myself and maybe the line would be noisy, or maybe the operator down there might be out, and I would have to copy them and later relay them to them.

Q. Have the telephone company got an agent on that road?

A. Not at the time I was there.

Q. What?

A. Not at the time I was there. They had no agent that I know of.

Q. The telegraph company?

A. Yes, they have an agent.

Q. Who is he?

A. Mr. McKenna, Sister's Creek Camp.

Q. Were those telegrams sent down over the road or over the telephone line?

A. Over the telephone line.

Q. Both of those going out and coming in?

A. Yes, sir.

Q. And the phone was used for the purpose of telephoning in and away from Fort George Island?

A. The telephone was supposed to be used for any business it was to be used for. It was there for that purpose.

Q. And that telephone line was maintained and operated by the North Shore Corporation?

A. No, sir, it was owned and maintained—it was maintained or kept up by the North Shore Corporation. It paid the working salaries, but it was owned by the Bay Shore.

Q. But it was maintained and the workers were paid by the North Shore Corporation?

A. They were paid on my payroll by the North Shore Corporation to come out of the pay, but the charges were charged to the Bay Shore. There was an entry separating the division of the different disbursements of the payroll as to what percentage should be charged to this or the other, whether bridge, road, Bay Shore or what not. The Bay Shore also had a water line down at Dame's Point that they would collect water revenue from. Anything that was paid on that was turned in and separated from the rest of it.

Q. Now, those clubs down there. How were they operated? Would the guests come down the road or would they arrive by train or come from other states in on cars or yachts, or how; do you know?

A. All I ever saw come in came in their own private cars down the road, and for hire automobiles.

Q. Did either of those groups operate a station wagon, Mr. Holder?

A. One operated a station wagon, and one operated a truck that they hauled baggage in.

Q. Did you ever go down and see any yachts tied up at the Ft. George Inlet?

A. No, sir.

Q. You have never been to either one of those clubs?

A. Through there twice, but I have never been to the waterway, because I did not have occasion to and I didn't go.

Q. Now, how often would you say that road was used by commercial vehicles delivering merchandise to stores and camps on that road?

A. The road was used every week, as they had trucks that made weekly deliveries down there.

Q. Will you name some trucks that made weekly trips down to that section?

A. Peanut truck made one trip a week, the Gardner Peanut Company truck; beer trucks weekly, and some times every two weeks, and they had soda water trucks that went down there.

Q. Did they have any food trucks?

A. No, no food trucks come by there except when Main Street Road was closed, and under repairs, they would come over the road to go to Eastport to make deliveries there. Mr. Camp, a merchant who does business in New Berlin would come in and buy some stuff and haul it in his own truck, and come and use the toll road.

Q. Were any supplies delivered to dredges or machinery over the road for dredging and work down on Sister's Creek and below there?

A. Yes, sir, there was stuff going down for that. The men mostly had their own trucks, and would come and get the stuff and haul it down there. The man that had the contract for the job.

Q. Do you know of any passengers that were discharged down there from boats at Sister's Creek Camp,

and hauled to Jacksonville from yachts or boats passing through the waterway?

A. Do I know of any discharged?

Q. Yes.

A. No, sir, I do not.

Q. Or picked up?

A. No, sir.

Q. Did you see any tobacco trucks from out of the state make deliveries down there?

A. There has been a few occasionally. The Lucky Strike people and the Old Gold have come down maybe once or twice. There have been dealer trucks go down there, once or twice a year, during the season.

* * * * * * * * *

Q. Mr. Holder, was it or was it not a part, if you know, you can answer it—a part of Foreman Booth's duties to go up and down the road to inspect a lot of bridges, telephone lines and the poles?

A. Yes, that was part of his job. He was foreman over the road. He had to do that.

Q. He more or less made an inspection, and would work where he deemed necessary?

A. Yes, and he and Pannell would go down the road in the afternoon after they knocked off work and would be down the road an hour on an hour and a half after they knocked off work, and still laying out work for the next day.

Mr. Hartridge:

Your witness, Mr. Smith.

Cross Examination.

By Mr. Smith.

Q. Mr. Holder, you say that the record you kept of foreign licenses traffic over the road was incorrect?

A. Absolutely.

Q. Deliberately false?

A. I didn't say that. It was kept that way on instructions from the office.

Q. It was kept falsely on instructions from Pannell?

A. I do not know about that, but it was kept that way as far as orders were given me.

Q. You also say three out of every ten cars on the average that went over the road and paid tolls were foreign licenses?

A. Yes, I would say at least that many.

Q. And of those cars, how many can you identify over any given period of time as being in transit between a state other than the State of Florida, and some point down the road?

A. Being in transit from one state to another?

Q. Yes, sir.

A. All I can go by is the license I take when it comes over the road.

Q. You do know, do you know, that people that used to tour stayed in Jacksonville, went down the road on a trip and then back to Jacksonville and stayed there at nights?

A. Do I know that?

Q. Yes.

A. No.

Q. You do not know that?

A. No.

Q. What places down the road were there that such fishermen could stay?

A. A lot of places they can stay. If he has got a camp he can camp out. If he has got a tent, he can put up his tent. I guess he could stay at Fort George or Pilottown. Mr. McKenna's at Sister's Creek, he has got cabins down there.

Q. Give us a number of the rooms he could have available down there?

A. I can't give you that. I haven't made a search.

Q. You haven't made a search and you can't give me that information?

A. I can't give you that. I didn't go into the details. I didn't ask any persons how many rooms they had.

Q. You have never made a special survey of cars, of foreign licenses of cars going over the road?

A. I can see when he pulls up to the window; I can see his tag on the automobile.

Q. How many times have you been up and down the road?

A. I should say maybe one hundred or one hundred and fifty times.

Q. How many times have you stopped at Eastport?

A. Possibly a dozen.

Q. How many times have you stopped at Dame's Point?

A. I haven't kept a record.

Q. About how many?

A. I wouldn't say definitely. I couldn't tell you.

Q. Have you ever been to Dame's Point?

A. Oh, yes.

Q. Have you stopped at Brown's Creek Fishing Camp?

A. Yes, sir.

Q. Have you stopped at Clapboard Creek?

A. Yes, sir.

Q. White Shell?

A. Yes, sir.

Q. Sister's Creek?

A. Yes, sir.

A. Pilottown?

A. Yes, sir.

Q. Have you ever been up on Fort George?

A. Twice.

Q. Twice?

A. Yes, sir.

Q. Have you ever been to Rainbow Camp?

A. Yes, sir.

Q. Have you ever been to the camp out at the North Jetties?

A. Yes, sir.

Q. Is there any place that people can live at the North Jetties Camp?

A. Not that I can remember.

Q. At Rainbow Camp?

A. Except the people that live there.

Q. At Pilottown. Can you rent a room from the residents there?

A. Yes, sir. Chitten had rooms to rent.

Q. How many rooms does she have to rent?

A. I wouldn't know.

Q. Are there any hotels on Ft. George, apart from the Ft. George Club and the *Rebolt* Club?

A. Not that I know of.

Q. Any place that they rent rooms on Fort George aside and apart from these clubs?

A. I do not know.

Q. How many cabins does McKenna have for rent?

A. I haven't counted them. Two or three.

Q. Two or three?

A. Yes, sir.

Q. How many does White Shell have to rent?

A. I do not know.

Q. You never saw any?

A. No, sir.

Q. How many at Clapboard Creek?

A. I never saw any there.

Q. How about Brown's Creek Camp?

A. At Clapboard Creek, there was a lady there that had rooms.

Q. That she used to rent to fishermen who came down?

A. Yes, sir.

Q. One cabin?

A. Yes, sir.

Q. How about Brown's Creek?

A. I think there is one built down there; maybe could get one or two rooms out of it maybe.

Q. How many places were there that took in visitors or guests at Dame's point?

A. I wouldn't know.

Q. You do not know of any, do you?

A. I couldn't say offhand, no, sir.

Q. How many at Eastport are there, do you know?

A. I wouldn't be familiar with it.

Q. You have been there a hundred or a hundred and fifty times?

A. Not at Eastport. I have been down the road to go through Eastport, but not in Eastport.

Q. You know of no places at Eastport?

A. No, not to go in and see.

Q. You can't tell the Court where any people, coming down with a foreign license, could stay except in one cabin at Brown's Creek?

A. They could make a trip down the road and come back.

Q. Do you know of any who did that?

A. You could not compel them to say. I couldn't lay a finger on any particular one. I didn't ask them their business when they stopped.

Q. The answer is you don't know of any that did, do you?

A. I couldn't say I do know of any that did that.

Q. Do you tell the Court that once or twice a year a Lucky Strike or Old Gold truck goes down the road coming from Georgia or elsewhere to deliver merchandise?

A. I didn't say to deliver merchandise. Went down on detail sales.

Q. They went down for advertising their product?

A. That is right.

Q. Now, you named the Gardner Peanut Company?

A. Yes, sir.

Q. And Beer trucks?

A. Yes, sir.

Q. Soda water trucks?

A. Yes, sir.

Q. Are they not all trucks of Jacksonville people?

A. Yes, sir, they are operating right here in Jacksonville.

Q. And they made trips and deliveries from their stocks right here in Jacksonville, so far as you know.

A. They make deliveries of beer or goods from their warehouse. They those goods come from, I couldn't tell you.

Q. You mean where they came from before they got in the warehouse, you do not know?

A. I do not know.

Q. You spoke of Mr. Booth as being on call for fifty-five hours a week?

A. Yes, sir.

Q. Where would he stay when he was on call?

A. He was up and down the road most anywhere; he could be several different places.

Q. Where does he live.

A. Dame's Point.

Q. When he was through with his work for the day and when he met Pannell and talked in the afternoon, wouldn't he ordinarily go home, Mr. Holder?

A. Ordinarily, I presume so. He wasn't there every day to—

Q. He wouldn't stay at the toll house No. 1 or 2, awaiting instructions, would he?

A. Not any instructions to wait. When he had finished doing his work, he would usually do as he wished.

Q. But the company made free, if the bridge was hit by a car, to call him out at any time; is that not so?

A. He was subject to call, yes, sir.

Q. The same thing was true with reference to the laborers, wasn't it?

A. If necessary, and they had to be out.

Q. Now, exactly what did you tell Mr. Pereira about how showing foreign cars on his reports?

A. I just told him it was not necessary to show them.

Q. Did you tell him to show a zero?

A. I didn't tell him what to show? He didn't have to keep an accurate count.

Q. You, yourself, when you always filled in a blank, you showed either a definite number of cars or zero, did you do so deliberately, knowing there were more cars than you showed?

A. Yes, I put down less than I showed.

Q. You showed or put down less than there actually were?

A. Less than there actually were, yes, sir.

Q. I want you to tell the Court when you started this practice, Mr. Holder?

A. I couldn't tell definitely. I wouldn't know.

Q. Do the best you can?

A. I would say two or two and a half years ago. It was a considerable time anyway.

Q. You were discharged in October, 1941, were you not, Mr. Holder?

A. That is right, the 15th day.

Q. And you say that for the period then from about October 19, 1939, to October of 1941, the record is not accurate?

A. I wouldn't say that more than a couple of years back; it could have been February or January, but I would say for a couple of years' period.

Q. I want you to examine Exhibit I, attached to the stipulation in this case, and note the foreign cars reports from month to month and tell the Court, to the best of your ability, just when it was in the period covered by Exhibit I that you ceased to cover the foreign cars accurately?

A. What year?

Q. 1938.

A. If those are figures I had taken from records which I turned in, they are right, but until I have checked the records and counted through them, I couldn't tell you.

Q. Do you notice any substantial difference between the figures collected in 1938 and the figures in 1939 and 1940 and 1941? Please examine them before you answer.

A. You mean larger in 1939 and 1940 than they were theretofore; there wasn't any hardly at all turned in.

Q. That is right. When can you spot the drop off in cars where you deliberately quit registering them?

A. Even in that period of time, there is still not a percentage of what went over.

Q. I don't want to argue with you. Examine that, please. Are you able to say when you ceased to keep the record accurately?

A. I couldn't say that, because there was always a record kept. Now, how many were kept, I couldn't tell you, until I examine and go through every report piece by piece. Every toll collector has previously put down how many foreign cars he had, and I have summed them up on the report to show how many total foreign cars were put in the total of what I actually put down. My actual foreign travel comes under No. 1 here.

Q. When did the drop exist in that?

A. I wouldn't know until I looked through every sheet in the whole four or five years I have been there, and took them all out and got the percentage.

Mr. Smith:

We have endeavored to stipulate here so as to save a burdensome record. We have the records on the tickets that are tabulated into Exhibit I, and counsel has had an opportunity to examine them. I think he perhaps has not looked at every one of them, and all of these sheets from the commencement of the record up to October 15, 1941, are signed by Mr. Holder. Will you gentlemen agree to that on this record?

Mr. Boggs:

I know in a general way they are. I do not know that every one was. I know in general that he was the man supposed to do it.

Mr. Lake:

You have referred to the tabulation only?

Mr. Smith:

Yes.

Mr. Lake:

Yes, that is conceded. The record itself will show who signed it.

Mr. Smith:

I didn't want to put the whole record in.

That stipulation is made between counsel except for Mr. Holder's two weeks' vacation period each year, when the reports were signed by someone else.

The Court:

All right.

Mr. Smith:

Q. Mr. Holder, shortly after you were discharged, you went to Mr. Hartridge, and I think you attempted to em-

ploy him to bring a claim of your own against the North Shore Corporation under the Wage and Hour Law, did you not?

A. Yes, I talked to him.

Q. You talked to him, did you not?

A. Yes, sir.

Q. Refreshing your recollection from the pages of Exhibit I, you will note that there was almost a complete dropping off in the showing of foreign traffic as of November of 1941, which continued all the way through 1942. That was just short of two years ago. Did you not at the time of your discharge tell these boys not to show these foreign cars any more?

A. I told them it was not necessary to show it, to show the number, because the instructions were not to show too much because they didn't want too much on the reports going into the office.

Q. That was October, 1941?

A. That was a long period before that.

Q. Did you repeat the instructions in October, 1941?

A. No, and I didn't repeat them in 1941.

Q. I see.

* * * * * * * * *

Re-Direct Examination.

By Mr. Boggs:

Q. Mr. Holder, you were asked by defendant's counsel whether you had any means of telling about foreign cars being actually in interstate journeys instead of just merely having foreign license tags. You recall about being asked about that?

A. Yes, sir.

Q. Isn't it a fact that people stopping at the toll house No. 1 to ask for directions to go down to places to fish and so forth from time to time?

A. Yes, and we hand them the map, and we explain the details of the road, and they can take their choice.

Q. Isn't it also a fact, or is it a fact that where people would stop to ask you questions and to talk with you, that in a good many instances you were able to tell they were engaged in an interstate journey? Is that true or not true?

A. They were going through the state, and they were told about this drive, and wanted to go down to fish, and wanted to know the best spot to fish, and we never had a preference of any camp, and we would give them the map and explain the locality on the road, and let them choose any place they liked.

Q. And there were occasions, and it happened with a fair degree of frequency, did it not, that where you could tell that a car was engaged in interstate journey?

A. I could probably know the equipment coming through that they had come down for the trip, or were going further south; thought they would stop and fish, and on our way back home we will stay one day with you.

Mr. Smith:

I move to strike that answer on the ground it contains his surmise or conclusion.

The Court:

I grant the motion.

Mr. Boggs:

I beg your pardon?

The Court:

I granted his motion.

Mr. Boggs:

Q. About how far is the entrance of the Heckscher Drive from the Georgia line, if you can recall it?

A. That I couldn't say not knowing the distance of the road, and never having measured it; I couldn't tell you.

The Court:

Have you some idea and do you have an approximate idea?

A. Judge, truthfully I do not know. I am trying to tell the truth and the whole truth and I can't tell you different from what I do not know.

Mr. Boggs:

Q. What was the season of the year when the fishermen used to go down, when you were working for the company?

A. Of course, the best travel over the road is always during the summer months.

Q. Did Mr. Pannell give you any reason when he told you that he didn't care to have those reports show too much out of the state traffic? Did he give you any reason for that action?

A. No, he didn't give any reason. He said he didn't want the reports to show too much foreign travel on there, to come in on the reports, and the man being an authority, I didn't question his authority in asking, because I was only carrying out his orders.

Mr. Boggs:

That is all.

Re-Cross Examination.

By Mr. Smith:

Q. Mr. Holder, didn't you earlier inform Mr. Boggs or Mr. Hartridge that he did assign a reason that had to do with insurance?

A. No, sir, I definitely did not.

Mr. Smith:
That is all.

Mr. Boggs:
That is all.

The Court:
Come down, please.

(Witness excused.)

Mr. Hartridge:
Mr. McKenna.

148 EDWARD McKENNA, having been produced and first duly sworn as a witness on behalf of the Plaintiffs, testified as follows:

Direct Examination.

By Mr. Hartridge:

Q. What is your name, please?

A. Edward McKenna.

Q. And your occupation?

A. I operate a fishing camp, at Sister's Creek and Heckscher Drive.

Q. Mr. McKenna, how many guests can you accommodate there at a time?

A. Well, I have got three houses, and I can accommodate four in one house, six in another and five in another.

Q. Mr. McKenna, prior to the time the United States went to war, back in 1938, or 1939, 1940 and 1941, were you at the same location?

A. Yes, sir.

Q. Did you or not have guests there or fishing parties from out of the state?

A. Yes, sir.

Q. Can you name any of them?

A. Offhand,—yes. Doctor Bess and a party comes down from Barnville, North Carolina; John Guinn, from Atlanta, Georgia, and Mr. Strickland from Valdosta. I can't name offhand how many would come.

Q. Did you ever have occasion to rent your whole camp to people from out of the state?

A. You mean all three buildings I had?

Q. Yes.

A. Yes, sir.

Q. Do you know other people come down from Georgia and fish for a day and go back the same day?

A. Well, I would say we are about forty miles from the Georgia line, and there are people from Folkston and nearby points that come over and spend the day and go back.

Q. Do you serve them there at your fishing camp?

A. Yes, sir.

Q. They talk to you and you notice they are from out of the state and come down that day for recreation?

A. Several I happen to know.

Q. You know them personally?

A. Yes, sir.

Q. Do you run a small store there?

A. Yes, sir.

Q. What do you carry?

A. Fishing supplies; boat supplies; cold drinks, beverages; beer.

Q. Any groceries?

A. No groceries since rationing. I used to carry a small line such as knick-knacks that the boys could take in the boats when they go out fishing, like crackers, bread, sausage, sardines, and stuff like that, but on account of rationing I don't do it now.

Q. Do you run a restaurant there?

A. Yes, sir.

Q. How many fishing boats do you have there at a time?

A. You mean of my own?

Q. Yes.

A. Of my own?

Q. That you operate there?

A. Well, I have about sixty boats, or about fifteen in the water at the present time. I have more than I have use for.

Q. What is the greatest number of boats you had use for?

A. Sixty at one time. I used to operate sixty boats at the camp.

Q. How long ago was that, Mr. McKenna?

A. Well, previous to the time of the war, as we used to operate them. Since the rationing of gasoline and so forth, we don't have occasion to.

Q. You spoke of Mr. Strickland?

A. Yes, sir.

Q. How would he come down to Ft. George?

A. Well, at times—Mr. Strickland has a boat here in Jacksonville, a yacht, called The Cherokee, and at times he would have his captain bring the yacht down there, and he would come by car from Valdosta, and several times he has come down during the hunting season and come down and would take a cabin and have his yacht come down there, down the waterway, and he would anchor there, and he might hunt from the boat, if it would be in the hunting season.

Q. Do you know of any other people that have got yachts and who have come through there, and anchored and stayed there?

A. I couldn't say offhand to name them, no. There is a Mr. Vandermeer, I believe his name is, who comes down from Buford, North Carolina, or South Carolina.

Q. What is the most yachts you have ever seen anchored opposite the clubs at Fort George Island in the Inlet?

A. I have delivered telegrams up in there when I have seen two and three yachts back in the basin at a time.

Q. Are you the telegraph agent down there?

A. For the Western Union and the Postal Telegraph, yes, sir.

Q. Have you got any idea how many telegrams you deliver a year? I mean, when these clubs were operating; and not since they have closed?

A. Well, I can't say offhand. I would say that I have received compensation there as high as a hundred or a hundred and twenty-five or one hundred and fifty dollars for telegrams some months alone from those clubs, from the Western Union when the clubs were open.

Q. Mr. McKenna, on that telegram would there be any notation on it of a call coming to you from the Western Union in the toll house, or in the company's record?

A. There used to be. It should be a call from the Western Union. Used to keep tabs of all incoming and outgoing calls, so that there would be a record of the Western Union incoming and outgoing calls.

Q. The Bay Shore took out your telephone, didn't they, Mr. McKenna?

A. Yes, sir.

Q. Who had the most business on that road as far as telephone calls and telegrams were concerned? Who had all of the telegrams?

A. I had all of the telegrams and the telegram business.

Q. A new agent was appointed there after you ceased to have a telephone?

A. No, sir.

Q. Mr. McKenna, did anybody—if anybody called collect long distance over your telephone, would there be a record of it if it was made collect?

A. If it was a call on the other end collect, or collect by me.

Q. On the other end?

A. I never made a record. We would put the call to the toll house and from there it would be handled by the operator at the toll house and the Southern Bell.

Q. Would there be a record of an incoming long distance call?

A. Not to my knowledge.

Q. Mr. McKenna, I will hand you a schedule. Were you telegraph agent during the time that that schedule covers?

A. January, 1942?

Q. Yes.

A. Let me see—1942. I believe the phone was out during the month of January, 1942. The phone came out in—I can't say offhand when the phone was out.

Q. Do you know when you got it back?

A. I got it back last July, I believe, June or July.

Q. June or July?

A. Yes, sir, that is right. And it was out for eight months; I believe seven or eight months.

Q. How does the volume of business you carry on now compare with the volume of business prior to Pearl Harbor?

A. Oh, no comparison. We don't have the business.

Q. How do the number of foreign cars using the road now compare to the foreign cars that stopped at your place prior to Pearl Harbor?

A. Well, we have very few today, due to gasoline rationing from last—from January until I believe it was April, we had very little local cars, much alone any foreign cars.

Q. Mr. McKenna, do you know just who passes over that road?

A. No.

Q. I mean people that live on the road. Do you know all of them?

A. Yes, sir.

Q. You do, do you not?

A. Yes, sir.

Q. Exclusive of people that live on the road, what percentage of cars used the road would you say prior to December 7, 1941, were cars from states other than the State of Florida, and coming to Florida?

A Well, over week-end periods, we would have quite a few foreign cars in the camp. We would have tourist and people down over the week-end; a lot would come down on Saturday and leave on—come down on Saturday and lay over and fish Saturday and Saturday night and go back Sunday.

Q. What percentage of the traffic on the road would that foreign business be?

A. I couldn't state exactly what the percentage would be, because I have never—

Q. Would you call it an extensive amount compared with the total volume of cars?

Mr. Smith:

That is objected to as calling for the witness' conclusion.

The Court:

I am going to sustain the objection the way the question is framed. However, I think you can reframe your question.

Mr. Hartridge:

Q. Mr. McKenna, what would you, in your own terms, term the amount of cars going down there in relation to the number of cars on the road?

A. On a percentage?
Q. Of paid cars.
A. Of paid cars?
Q. Yes, exclusive of people that have passes?
A. Oh, I would say of the paid admittance of people having passes would be about ten percent compared with the number of cars that drives the road, I believe.

The Court:
You haven't understood the question. Read the question.

Question read.

The Court:
He wants you to exclude the pass cars, and what percentage of the cars were foreign, and what percentage of the cars were local. You can go ahead and answer that question?

Mr. Hartridge:
I meant to exclude the cars with passes, your Honor.

The Court:
I say, exclusive of cars with passes, the remaining cars; what percentage was foreign and what percentage was state license cars?
A. Well, during the week ends, during the winter months there wouldn't be many foreign cars except cars attached to the club, and in the summer time I would say probably fifteen per cent of the cars would be cars from out of the state that would drive the road over a week-end.

Mr. Hartridge:
Q. Mr. McKenna, did you ever see any dredges tied up down there?
A. Yes, sir.

Q. From what state? Whatever dredges you know of?

A. The dredge that did the dredging of the inland waterway canal was the Robert M. Brown Dredging Company of Tampa. There are two in there at the present time. The Arundel Company, I think they are from Baltimore, Maryland, and the St. Johns River, they are dredging in the St. Johns River, was the dredge Duplex of St. Louis, Missouri.

Q. Where did those crews come from? Did they come down in their own cars, any of them?

A. The personnel of the dredges, that is affixed to the dredge; the local board here took care of the local labor such as deck hands and pipe line men, but the engineers, the captain and the lever men, some of them came from Missouri, some from Louisiana, some resides on my place.

Q. How did they get to your place?

A. By automobile.

Q. How did the dredges get equipment—over the river, or over the road?

A. It depends chiefly on how it is shipped. Groceries I have seen hauled on a truck, and equipment I have seen brought in by truck and by boat.

Q. Do you know of any single item of equipment that came through to the dredges over the road from another state, on any of the dredges that are down there?

A. Only on one occasion, I know the Robert M. Brown Company had to have a cutter built, and they couldn't build it at the foundry at Jacksonville, and it was built in Georgia, I forget where, but it was built in Georgia, and brought down here on a truck; a cutter head for the dredge.

Q. Mr. McKenna, do you know whether the people came down on yachts, or any instances where the people came down on the yachts and lived on the yachts and not at the clubs there?

A. Yes, sir, there was the yacht Firefly, belonging to some newspaper man in Philadelphia. He parked at the

dock and lived aboard the yacht. And then there was another man, I believe his name was Fernway or Fenway —I had had occasion to deliver telegrams to him; and he lived aboard his yacht in the basin.

Q. Those are the only two you had occasion to contact personally?

A. Yes, sir.

Q. But you know that people live aboard their yachts?

A. Oh, yes, they come down there from all over, and live aboard their yachts during the hunting and fishing seasons.

Q. Did these yachts have crews?

A. Oh, yes, if the yacht is of any size, it has a crew.

Q. Were those crews local men or did they come down on the yacht?

A. They came down on the yacht. The yachts pass through the inland waterway, and they all carry crews, and they tied up at my dock many nights.

Q. Those people, how do they get to town; how do they get their supplies?

A. Well, some of them—I have seen them use their own car to go to town. Others have called the Safety Cab and they have sent transportation, and they go to town and buy groceries and bring them back and then the cab driver takes the car back to Jacksonville.

Q. Do you know who maintained that telephone line?

A. Who kept it up?

Q. The telephone line?

A. Well, up until recently when the telephone line was first installed, it was maintained by the employes of the road, and then later a man by the name of, I believe, Mr. Stewart connected with the Southern Bell, that does all the work on it at the present time.

Q. Did you ever see a man by the name of Booth and some negroes working on any bridges on that road?

A. Yes, sir.

Q. Did they ever do any work on the Sister's Creek bridge?

A. Yes, sir.

Q. Did you ever see them doing any work on the telephone line?

A. Yes, sir, Booth practically built the line when it was first built.

Q. Did those same men until the Bay Shore became a telephone company,—did they repair the line and keep it in repair, Mr. McKenna?

A. Yes, sir.

Q. Did they repair the bridges and keep them in repair?

A. Yes, sir.

Q. And they did the same work on the road?

A. Yes, sir.

Q. From time to time?

A. Yes, sir.

Q. And you testified, Mr. McKenna, that you have collected as much as one hundred dollars or some a month for telegrams. How much did you get for a telegram, delivering one?

A. Under the old setup, under the old telephone system, I got one dollar a telegram for delivery, and under the new setup the telephone or the Western Union pays the outgoing call from the Western Union, and I get seventy-five cents now under the new set-up.

Q. Mr. McKenna, are there any other out of state people, possibly those residing in the clubs, that come down to Fort George Island?

A. Yes, some of the folks that live on Fort George, and live from out of the state, they come and visit there.

Q. Are there any out of the state people all around there who own winter homes there?

A. Yes, sir. On the Island?

Q. Yes, sir.

A. Yes, sir.

Q. Can you name some of them?

A. Yes, sir.

Q. Will you do it?

A. Grantland Clark has purchased a home there recently, and there is a home there that belongs to the Heckschers; a home I believe belongs to—I can't recall his name, offhand.

Q. You aren't personally acquainted with them?

A. I am acquainted with them through the telegrams; I deliver telegrams to them; knowing which homes they are at, and all.

Q. Mr. McKenna, do you know of any that supplies and commerce, whatever little there is down there, can move except over that road? Do you know of any other method it can move?

A. No, sir. It can be brought out by water from Mayport, but I think most of it comes over the highway.

Q. Do you just deliver telegrams to Fort George, or do you deliver to other areas?

A. I deliver from my place to Fort George, to New Berlin, to Eastport, to—I forget, a little burg back there, I think it is called Pumpkin Hill. What there is other than that, I do not know, but back in as far as Stewart Road, and off the old New Berlin road, which leads into Cedar Point.

Q. Do those telegrams all come from points in the State of Florida or do they come from points outside of the State of Florida as well?

A. They come from points all over the country. More from out of the state than there is in the state, especially when the clubs are open; all telegrams pertaining to the guests at the club.

Mr. Hartridge:

Your witness, Mr. Smith.

Cross Examination.

By Mr. Smith:

Q. Mr. McKenna, you have had in the past complete records on this telegram business, as well as telephone calls over your telephone, have you not?

A. Complete records?

Q. Yes, sir.

A. Yes, sir, I have to turn them in complete records in order to get my money from the telegraph company.

Q. And on the records you show the exact number of telegrams and the points of origin, do you not?

A. Yes, sir.

Q. Where are those records?

A. Where are those records?

Q. Yes, sir.

A. I have got some at home, and I keep them only for a period of sixty days, and then they are the property of the Western Union. I only keep a sixty-day record.

Q. And you testify to this Court you have received $150.00 per month?

A. I didn't say $150.00.

Q. In telegraph fees?

A. I have received $150.00 one month for telegraph fees, yes, sir.

Q. One month?

A. One month. I have received as high as seventy, eighty and ninety dollars other months.

Q. What month was $150.00?

A. The month Wall Street crashed, and guests were all at the club down there.

Q. 1929?

A. No, sir, In 1939 when, I believe Whitney was the president of Wall Street, back when that crash came.

Q. What is the next highest month to that one hundred and fifty dollar month?

A. I can't tell you offhand, but I can bring you up the report of the checks I have got from my records. I think ninety-seven dollars was the next check.

• • • • • • • • •

Mr. Smith:

Q. What records from the Western Union do you keep?

A. What records?

Q. Yes, sir.

A. Accounts receivable to my business.

Q. In what form is that kept? A permanent accounts receivable ledger?

A. No, I keep it year by year for the purpose of my income tax.

Q. How far back does that record go?

A. I have a complete—it goes about two years time, and then I destroy my records. I have no occasion to keep them.

Q. At the present time how far back have you those records?

A. I have them to 1941, I believe.

Q. You do not have the 1939 record?

A. No, sir.

Q. You do not have the record that shows the check of ninety-seven dollars?

A. I believe I do. I can tell from the records whether it is in the 1941 record or not.

Q. The record that you keep, will you describe it to the Court?

A. In regards to what it is; as to my business?

Q. Telegrams, Mr. McKenna; we are talking about telegrams.

A. Telegrams?

Q. Yes.

A. The record—I have to fill out a form as to the origin of the telegram, to whom it is going and from whom it

was sent; the time that I received the telegram, and then I deliver that; I keep the record for a period of thirty days. I keep a copy of it, and at the end of sixty days, if there is no correction on it between that time, I turn it over to the Western Union.

Q. You said you keep a record of the money received by you from the Western Union?

A. Yes, sir.

Q. I am asking you with reference to that record of the money received by you from the Western Union? In what form is it? What does it look like, and how do you keep it?

A. All I do, I have an accounts receivable in my register.

Q. Do you have a register anything like these books here (indicating)?

A. Something like that.

Q. How thick a record is it?

A. How thick is it?

Q. Yes.

A. I keep a record for each month, and for twelve months of the year.

Q. You use one book of this size?

A. No, it is a larger book. Each month I use one leaf of the book, and the book, that covers twelve months period, and every month is a separate sheet.

Q. And when the particular year is concluded, you destroy the book?

A. No, I keep it for a period of probably six or eight months, in case a question comes up or something. Then I have no occasion to keep it. I have a record of my accounts as to my present business.

Q. You don't think now you have those records any further back than two years?

A. That is about all.

Q. Will you produce in this Court without any further subpoena from the Court such records as you do have?

A. Yes, sir, I will be glad to.

Q. Now, do you wish the Court to have the impression that there is no means of land communication from the rest of the United States to Pumpkin Hill, Stewart Hill, New Berlin, than over Heckscher Drive?

A. No, I didn't say that. I said telegrams; that I delivered telegrams over there. That is the community allowed me by the Western Union for handling and delivering of telegrams. There are roads coming in from Highway 17, the old New Berlin Road, the waterway comes down from Jacksonville to Mayport; also I stated there could be stuff come from Mayport over to the Island, which had happened before we had the road.

Q. As a matter of fact, on one of these occasions you were delivering a telegram near Dunn's Creek and got in trouble with Pannell about it, did you not?

A. That is right.

Q. That resulted in a good deal of hard feelings between you, didn't it?

A. Considerable.

Q. That hard feelings resulted in your procuring yourself an attorney to handle the proceedings for you before the Florida Railroad Commission to obtain authority and to bring this suit against the North Shore Corporation?

A. Which suit? This present suit?

Q. Yes, sir.

A. Not to my knowledge.

Q. What did you do towards getting this suit started, if anything, Mr. McKenna?

A. I wasn't interested in this suit. What I was interested in was telephone service.

Q. You were also interested in getting a little revenge on Mr. Pannell were you not?

A. No, I got mine when I got my telephone restored.

Q. You didn't get that until August of 1942, did you?

A. True, but Mr. Pannell was dismissed at the time that lawsuit was brought up.

Q. Which lawsuit?

A. The lawsuit of the telephone company.

Q. I will ask you this: Mr. Pannell was relieved as of October 1st, 1941, was he not, to your knowledge?

A. Right around there, to my knowledge.

Q. And that was, I believe, long after you and he had had your dispute and disagreement?

A. About two or three months, I would say.

Q. And in the interim between the two and three months—of that two or three months, you know, do you not, that both your suit before the Florida Railroad Commission and this suit were started by your attorney, Mr. Hartridge?

A. Yes, I had known about it then.

Q. And did you not assist in the preparation of this suit, in getting the factual basis for it together?

A. Not to my knowledge.

Q. You gave Mr. Hartridge no help at all, did you?

A. I gave no help in regard to this suit other than to mention, when he asked me who the boys were that worked on the road, I said to go to the toll house and get the names from the payroll as far as I knew.

Q. Didn't you send some of the boys to see Mr. Hartridge in the first place?

A. No, sir.

Mr. Lake:

I object to that as irrelevant and immaterial, and entirely outside of the issues in this case.

A. He brought Mr. Smith and two or three or four others down to my office and called me up.

The Court:
If the purpose of the examination is to show the prejudice of the witness—

Mr. Smith:
That is right.

The Court:
—I will have to overrule the objection.

Mr. Smith:
What was the last question and answer, please, Mr. Reporter?

. . . The record was read.

Q. Are you acquainted with the present operators of the White Shell Fishing Camp?
A. I know them to speak to, yes, sir.
Q. Is the name of the wife of the person who runs that camp—Do you remember her name?
A. I do not know the woman's first name; her given name, I do not know.
Q. Do you know her last name?
A. I can't say. I think—No, I don't know. I have met them several times, and when I had the Air Warning Station down there, they gave me their names when I wrote them down, and they only answered the call one time, and I had no occasion to remember their name.
Q. Do you recognize the name of Penland?
A. Yes, sir, now that you recall it.
Q. Did you recently have a conversation with Mrs. Penland about this suit?
A. No, sir.
Q. You did not?
A. I haven't seen Mrs. Penland to have occasion to have a conversation with her.

Q. Did you talk with Mrs. Penland about this suit about three or four months ago?

A. No, sir.

Q. Did you ever talk to Mrs. Penland about this suit, Mr. McKenna?

A. No, sir, not to my knowledge.

Q. Did you ever make the statement to her to this approximate effect: That when this suit was finished there would be such a big judgment against the North Shore Corporation that you would be put in one of the toll houses to collect the tolls to pay the employes off?

A. Not to my knowledge I never had that idea in mind.

Q. Mr. McKenna, you have been acquainted with Fort George Island for how long?

A. For about fifteen years.

Q. Approximately what was the population of Fort George Island in 1930?

A. Well, in 1930, there was just the old families that resided there around Pilottown; outside guests that came into the clubs after that.

Q. About how many would there be?

A. Of the old residents?

Q. Yes.

A. I do not know. I think two years ago, our records showed that we had 63 voters, two years ago, in the community; besides children.

Q. You are acquainted with those voting records, are you not?

A. To a certain extent.

Q. To what extent?

A. Just to the fact that we know how many voters there are in the community, and there were sixty-three up to the time that the boys who lived on the Island, went in the service and overseas, and various civilian workers went on trips; when all were there.

Q. You vote in the Fort George precinct, do you not?

A. Yes, sir.

* * * * * * * * *

Mr. Smith:

Q. Do you have at your camp any register of guests?

A. No, sir.

Q. Have you ever had?

A. I had for a while. I haven't operated a register in some time. All I have a record is of the Coast Guard identification cards now, and I have to list those. I have to take off of the Coast Guard card their name and their home address.

Q. How far back?

A. Since the time of the start of the Coast Guard identification cards.

Q. Approximately a year back?

A. About.

Q. That would show?

A. The name.

Q. That is as to residents who have registered at your camp, and those are Coast Guard regulations of boats in the river?

A. That is right. Not as to boats in the river, but anyone renting a boat from me.

Q. To go into the river?

A. Yes, sir, or into Sister's Creek.

Q. That includes all of your patrons, doesn't it?

A. Yes, sir, all except those that are connected with the Coast Guard or Government service. I make no record of that.

Q. Will you also bring that record in with you?

A. Yes, sir.

Q. You had a register at one time which you discontinued, is that right?

A. Yes, sir.

Q. Do I understand you correctly?

A. That is right.

Q. Do you still have that record?

A. No, sir. I do not know. It might be there. I could see if I could find it.

Q. Will you make a search for it, and bring it in with you?

A. I will be glad to.

Q. If you can find it?

A. Yes, sir.

Q. Are you able to give the Court specific information as to the number of out of state guests that you have entertained at Sister's Creek Camp at any given period of time?

A. No, sir, I am not.

Q. Are you able to give the Court specific information of the shipment of foodstuffs or machinery over Heckscher Drive from points outside of the State of Florida?

A. I am not in position to do that. I stated I only knew of one occasion and that is when they sent for a cutter head for the cutter on the dredge. They couldn't have it built in Jacksonville, and had to have it built in Georgia.

Q. Are you in a position to give the Court anywhere near an accurate estimate of the percentage of foreign licenses seen on Heckscher Drive as compared with the total number of cars seen on the drive, giving the specific period of time?

A. No, sir, I am not.

Q. What is your best estimate of the percentage of foreign licenses to total cars using the road in the year 1940. Can you give us that?

A. No, sir.

Q. Can you give it for any other year?

A. No, sir. I can't name any specific figure on the foreign cars.

Q. Not specific. I asked for your best estimate.

A. My best estimate?

Q. Yes, sir.

A. No, I am not in a position to do that.

Q. You have mentioned people who stayed on their yachts in the water around Sister's Creek Camp?

A. Yes, sir.

Q. Or Fort George Island?

A. Yes, sir.

Q. Are you in position to give specific instances of where those persons were from, foreign states other than Florida, who have come to their yachts over Heckscher Drive?

A. Only the one I told you about, Mr. Strickland, who keeps his boat in Jacksonville, and lives in Valdosta, and he would bring a party down in his car, and meet them at the waterway to save time, if he was going to Sea Island to spend a week, or if he was spending it on the water on the north end of the St. Johns River.

Q. Can you give the Court specific information as to the number of trips Mr. Strickland may have made for that purpose?

A. No, sir, I can't, because up to such a time that they lost their yachts to the Government service, he would come down during the summer, practically every week end.

Q. In the case of his being down here every weekend, would he travel over Heckscher Drive from Valdosta to the Sister's Creek Camp?

A. By automobile at times, and meet the boat at Jacksonville, or the club, and he came down and would go aboard it at the time.

Q. Can you give any split up between those occasions?

A. No, sir.

Q. You can't say he came down over Heckscher Drive in his car from Valdosta once every two weeks?

A. No, sir.

Q. Can you say any given number of times in a given period, Mr. McKenna?

A. No, sir.

Q. Now, this Mr. Guinn. Can you give the Court any number of times he would come in on Heckscher Drive?

A. He would have to come that way entirely because he had no water vessel.

Q. Well, how many times in a given period, then, did Mr. Guinn make such a visit?

A. Mr. Guinn has come down and spent during the hunting season probably two or three days this week, go back over the week end, and repeat right back if the weather permitted and the water permitted.

Q. Would you say he came down twelve times a year like that?

A. I would say—not twelve—five or six times during the hunting and fishing season.

Q. That would cover the whole annual interest in the road, would it not?

A. Yes, sir.

Q. What about Mr. Bess?

A. Mr. Bess would come down once a year on a fishing trip, he did until now, and he used to come down on a hunting trip; and necessarily that meant two trips in the period of a year for him.

Q. Is it correct that you can give the Court a maximum of only fifteen to twelve times a year where these out of state people have come down to Sister's Creek Camp from their home states and traveled over the road in so doing?

A. Only about fifteen people that came to Sister's Creek in the period of a year?

Q. Fifteen out of staters?

A. Fifteen to twenty.

Q. Per year who came down over Heckscher Drive?

A. Yes, sir. I would say more than fifteen or twenty people from out of the state.

Q. Give the Court your best estimate of the number of trips?

A. Trips?

Q. Trips over the road of foreign cars coming from foreign states?

A. I can't give an estimate.

Q. Would it exceed fifteen times a year?

A. It wouldn't exceed that by any one individual.

Q. By all of these parties?

A. By all of the parties?

Q. Yes.

A. Yes—No, I can't say that I can.

Q. I understood you to testify in answer to questions by Mr. Boggs that Mr. Booth and the road maintenance crew worked on the telephone line up until the time when the phone was put back in your place in July of 1942. Did I understand you correctly?

A. No, sir; up until such time as they took the phone out of my place. Booth took the phone out of the place.

Q. Thereafter you know of no contact that Booth or the road maintenance crew had with the telephone line?

A. Not until such time as my telephone was back in, and then it was maintained by a man by the name of Stewarts.

Q. You did say their contact with the line ended at the time the phone was removed, which was about August 1st, 1941?

A. To my knowledge, because I had no other means of finding out after the phone had been removed.

Q. You spoke of someone by the name of Graveland Parks. Did he come to Fort George Island in his car from another state?

A. Grantland Clark.

Q. He did?

A. Yes, sir, in a station wagon.

Q. How many times a year would he go down?

A. Just for the period of time that the club was open.

Q. One trip in and one trip out each year?

A. No, he would come down. As far as in and out of the state was concerned, yes, but he would go in and out over the road.

Q. After he got here, but he wouldn't go back and forth from Fort George to his home, but only in and out on trips?

A. That is right.

Q. What about Heckscher?

A. Heckscher generally came by train, and remained here while the club was open. The year before this, Mr. Heckscher drove in because he came in from a hunting trip in Georgia.

Q. How many trips per year can you attribute to attendance in those clubs, which came in over Heckscher Drive, traveling in from other states to Fort Georgia?

A. I can't.

Q. Can you give the number in a year?

A. I can't give even the number other than the ones I knew about there.

Q. Do you know approximately how many people came to and stayed in those clubs per year?

A. No, sir.

Q. Would you say as many as five hundred did?

A. No, I wouldn't be permitted to say. I don't know how many stayed at those clubs.

Q. Would you say as many as one hundred came there and stayed at those clubs each year?

A. I couldn't say, sir.

Q. Would you say that more than fifty persons came there and stayed at each of the clubs each year?

A. I know more than fifty came because a club couldn't operate on fifty.

Q. You think from fifty to one hundred did?

A. I don't think at all. I do know it would not be less than fifty or more than a hundred. I know that.

Q. Your best estimate would be at least one hundred a year?

A. I would say as my estimate one hundred at Ribault and 100 at Fort George.

Q. What would be your maximum limit to put on attendance per year in the Ribault Club?

A. I couldn't put a maximum because it varies each year.

Q. Mr. McKenna, can you think of any out of state people who came to your camp with their out of state cars, bearing Florida licenses; that would naturally have on them foreign licenses, who stayed at your camp long enough to make trips back and forth from your camp to Jacksonville over this road?

A. Yes, sir.

Q. About how many?

A. John Guinn from Atlanta, Doctor Bess; several of those people. Mr. Brooks of Macon, of the Brooks Shoe Company of Macon, Georgia. They come down and spend four or five days, and go back and forth to town.

Q. I mean in their own cars with their own licenses on?

A. Yes, sir.

Q. Who else?

A. I can't remember. I am just stating the few I can think of offhand, but they would go in for dinner or an appointment, and come back and fish and hunt, whichever they had occasion to do.

Q. At the present time are you having many customers coming down with foreign licenses, and working at the local shipyard or at the air station or anything like that?

A. We don't have many cars down there. During the week we have no traffic hardly at all, and the only traffic

we get is on Sunday, and I haven't paid any particular attention to the licenses. If they are working at the local shipyards aren't they compelled to have a state license after they start to work?

Mr. Smith:

That is all, subject to the witness' production of the records for which I asked.

The Court:

Anything further of this witness?

Mr. Boggs:

One question.

Re-Cross Examination.

By Mr. Boggs:

Q. Mr. McKenna, with relation to the work of the men in maintaining the telephone line, the question was asked you by defendant's counsel about whether you saw them work on the telephone lines any more after they took your telephone out?

A. Yes, sir.

Q. And your answer was that you did not? Is that correct? That you didn't see them work any more on the maintenance of the telephone line after they took your phone out?

A. After they took my phone out, I had no occasion to keep up with them.

Q. Counsel asked the further question to the effect didn't they quit work on the maintenance after that, and did you understand that question?

A. I probably didn't. I couldn't say whether they worked after the time they took it out.

Q. You were not present where they would have to do such work?

A. No, sir.

Q. You have no reason to suppose they ceased maintaining the telephone line entirely when your telephone went out, have you?

A. No, sir. I mean, after they had removed my telephone, I had no occasion to know whether they continued on work on it or not.

Q. Isn't it a fact, Mr. McKenna, that at times during the season when the club was open that you would see big wagons or trucks with baggage for guests go from Jacksonville out to the club?

A. Yes, sir.

Q. Was that frequent or seldom during the club season?

A. No, it depended on as the guests arrived. The baggage was picked up at the depots, or wherever it was gathered from and hauled to the club, and on departure it was conveyed back.

Q. Well, during the club season did that happen only once or twice or did it happen more often?

A. For each individual?

Q. I mean as a whole?

A. From the time the clubs opened, daily arrivals and daily departures.

Q. So that that baggage service you could see right from your own house on the Camp?

A. Yes, sir.

Q. And you could see the for hire cars or taxicabs or livery cars going through with club guests that were arriving with their baggage from time to time?

A. Yes, sir, and those were not cabs so much as they were limousines, furnished by the Safety Cab, I believe, who furnished the limousines.

Q. And did you or did you not on at least some of those occasions know personally some of the people who were coming through?

A. Yes, sir.

Q. And did you or did you not ascertain that on some of those occasions during the club season that such persons were went from the Union Station from Jacksonville out to the Club?

A. Yes, sir, according to the reservations made by the telegrams.

Q. Yes. The reservations would be telegraphed to the club in question?

A. That is right.

Q. And then later on you would see the guest arrive?

A. I would see the arrival of a guest.

Q. The sender of the telegram come through?

A. Yes, sir.

Q. And you would know that the person was traveling from the Union Station on out to the Club?

A. That is right.

Mr. Boggs:

That is all.

Mr. Boggs:

Your Honor—

Mr. Smith:

One more question.

Re-Cross Examination.

By Mr. Smith:

Q. The stipulation in this case entered into between counsel on both sides, Mr. McKenna shows that in the 1938-39 season, there were 45 people registered in the Ft.

George Club for the whole season? How long do the seasons run?

A. They generally open the Fort George Club the latter part of December, some times the 15th, 20th or 25th, somewhere, and generally close between the 1st and 10th of April, to my knowledge.

Q. That would be aprpoximately one hundred days run, would it not, or reason?

A. Right in that neighborhood.

Q. That would be approximately one hundred days testimony that these 45 registered from out of the state used this road back and forth from the Union Station every day?

A. I didn't say every day.

Q. I understood you to say that they would come in daily?

A. I don't mean the guests would come in daily over the road. I said I would notice the baggage being delivered daily.

Q. Did you notice baggage being moved daily for the various guests?

A. I noticed guests come and they would send in their baggage. They wouldn't all come the same day and depart the same day. There would be intervals of the different ones.

Q. Do you really mean you saw baggage for those clubs go over that road every day?

A. Not every day the season was open; not every day, no, sir.

Mr. Smith:

All right; that is all.

The Court:

Any further questions?

Mr. Boggs:
No further questions.

The Court:
Come down?

(Witness excused.)

* * * * * * * * *

The Court:
All right, the Court will recess until ten o'clock tomorrow morning.

. . . And thereupon, the Court was recessed to be reconvened at ten o'clock a. m., Thursday, June 24, A. D. 1943.

. . . And thereupon, at ten o'clock a. m., Thursday, June 24, 1943, the hearing was resumed pursuant to recess on the preceding day, and the following further proceedings were had.

The Court:
You may proceed, gentlemen.

Mr. Smith:
We have some further cross examination of Mr. McKenna, sir. He has brought in some of the records here that we requested yesterday.

The Court:
All right. Let us call him back to the stand, then.

187 MR. EDWARD McKENNA, having been previously produced and first duly sworn as a witness on behalf of the plaintiffs herein, was recalled to the witness stand, and testified further as follows:

Further Cross Examination.

By Mr. Smith:

Q. Mr. McKenna, have you brought with you this morning all of the records that we discussed in your testimony yesterday?

A. As far as I have them, yes, sir.

Q. With reference to the amounts paid you by the Western Union I notice that you have those amounts on a sheet which you have brought in?

A. Yes, sir.

Q. Is that a sheet of your original records that shows the amounts?

A. I took those off the record for you.

Q. Will you tell the Court, so far as you have the record, how much you have been paid by the Western Union in acting out there as an agent in the delivery of messages, and for as much time as you have the records.

A. September, 1942, $7.00;

November, 1942, $11.00;

December, 1942, $14.00;

February, 1943, $4.00;

April, 1943, $9.75.

Q. With regard to those figures, was your rate of pay seventy-five cents per message?

A. No, sir.

Q. What was it, please?

A. It was a dollar up until March 1st.

Q. Of what year?

A. Of this year, and the records was changed at that time, and I was to receive seventy-five cents thereafter.

Q. Now, you also have your—you also have with you the original current record on certain messages handled by you for the Western Union, do you not?

A. For May and June, up to today's date.

Q. Will you take your original record of that, and read into this record the messages which you have handled for the Western Union during those two months?

A. You want the origin of them?

Q. No; both the local and interstate messages, please?

A. T. O. Crews, from Houston, Texas; to Tony—

Q. That is what date, please?

A. May 7th. On May 14th, to Tony Churozzi, from Cincinnati, Ohio.

On May 16th to Tony Churozzi, from Jacksonville, Florida.

On May 21st to Guy Churozzi. A money order to be called for at the Western Union and it don't tell here from where it came. You are supposed to go there to identify where the money order came from.

On the 22nd, to Gilbert Jenks from Pine Bluff, Arkansas.

On the 25th, to Martin Miller, from Cleveland, Ohio.

On the 27th, to Virgie Jenkins, from Charleston, South Carolina;

On the 28th, to Mrs. E. G. Daniel from Atlanta, Georgia.

On the 28th, to Mrs. J. R. Hudnall, from North Charleston, South Carolina;

On June 7th—No, on June 1st, to M. L. Harris, from Ft. Georgia, Florida. Then—

Mr. Boggs:

From where?

A. They have it Fort George, Florida. From Jacksonville, it should be, to Fort George.

Mr. Smith:

Q. You say "they have it". Isn't this your individual record?

A. No. My wife writes some of it.

Q. Go ahead.

A. On June 1st to Olin Crews, from Houston, Texas.

On June 3rd, to Edna Snowden, from Jacksonville, Florida;

On June 7th, to Miss Lucy McWilliams, from Fresno, California;

On June 8th, to Mrs. P. E. Nichols, from Jacksonville, Florida.

On June 9th, Mrs. J. R. Hudnall, from Charleston, South Carolina;

On June 12th, to W. H.—I do not get that name—from Portland, Oregon.

On June 8th, to Morris C. Rains, from Springfield, Missouri, and on June 17th to Francis Spelkey from St. Paul, Minnesota.

Q. That is a complete record to date?

A. Yes, sir.

Q. Covering the months of May and June, 1943?

A. Yes, sir.

Q. Now, you have also brought with you your Coast Guard registration cards, have you not?

A. Yes, sir.

Q. Over what period of time have those registrations been made, Mr. McKenna?

A. As I remember rightly, I couldn't say and be positive, but I think the Coast Guard started to make identification cards from anybody entering boats, along about last July or August, 1942. I am not positive on that date now.

Q. Now, have you destroyed any cards of people so registered for the use of the boats since that time?

A. No, sir, but I started this index system so if a question came up, I had a record of the identification cards. Then they put into service down there the picket boats that anchored just outside of the bridge to a mooring, and now when I rent a boat since they have been there, we don't have to keep a record, because the boys are supposed to check every boat as it leaves the dock.

Q. When was that put into effect?

A. That was put into effect—I couldn't say what date. It was there just before the first of the year, either November or December, that the picket boats were put in there.

Q. These cards contain complete registration of parties going out in boats from your camp from an early date in 1942, to the very last part of the year?

A. These records contains a record of people renting boats from me when this card of identification was made possible from the Coast Guard, from the time they came to rent boats off me, and had to present cards, and I took a record up until the picket boats were put in down there.

Q. That was approximately from May, 1942, to December of 1942?

A. No, sir, I think in June or July, that that service was first initiated. I am not positive as to the month.

Q. Have you made a count of all of those cards of the Jacksonville people or Floridians who have so rented your boats as compared with the number of out of state people?

A. There is two out of state registrations.

Q. Out of a total of how many?

A. Out of a total of 132.

Q. Out of a total of 132?

A. Yes, sir.

Q. Or, 137, which?

A. I thought I counted 132 there. I quickly went over them.

Q. Two from out of the state, out of 132, as you made the count?

A. Yes, sir, that is my count of them, 132.

Q. Do you recall if any of those Florida registrations are from points other than Jacksonville?

A. No, sir, I didn't notice.

Mr. Smith:

That is all.

Re-Direct Examination.

By Mr. Hartridge:

Q. That card system didn't go into effect until after gas rationing, did it?

A. Yes, sir, it was previous.

Q. To the gas rationing?

A. I believe so, sir. I couldn't say for sure on that now, but, well, we, when the card system went into effect, I adopted this system of keeping a record if anybody rented a boat when the convoys were being made up in St. Johns River down there, and I am in a restricted area, and I made these records, so in case anybody should come out there and rent a boat, that I would have a record of his address, and serial number, so I could produce it to the Coast Guard, so as not to question it at any time, as the Coast Guard placed a vigilant watch at the bridge, and I was keeping this card index.

Q. Just to keep the record straight, what are these cards, and how do you secure a card from the Coast Guard. When the cards were first issued they were given to practically anybody, promiscuously, to anybody that went up there?

A. Well—

Q. Who filled out an application blank for them?

A. Identification photographs to the Coast Guard office, and they were issued a card, if somebody would vouch for them, but the rule changed last November. It was

changed, I believe, in October, and in November it was necessary to procure an identification card whereby you had to present a birth certificate in order to claim one.

Q. Mr. McKenna, would you say that more people from out of the state went fishing there before the cards went into effect than they do at the present time?

A. Oh, yes, for this reason: A man living inland has no occasion to need a card unless he does a good deal of fishing, and in any case, of course, the local residents they enjoyed the sport of fishing and hunting, and, why, they manage to get them a card, but out of state people, a lot of them come down to the camp and they ask about a boat and the first thing I ask them for, "Have you an identification card from the Coast Guard", and if they have not, they can not rent a boat, because the Coast Guard patrol will stop them before they even get out in the river.

Q. These cards are not necessary except in restricted areas; is that correct?

A. Yes, I believe they are necessary in any tidal waters. I think that is the way the law reads on that, in any tidal water entering into a main tributary of water, that it is necessary to have these cards.

Q. Mr. McKenna, is there or is there not a large sign on the Sister's Creek Bridge stating that there is a telephone there?

A. I don't believe there is any more. I think the sign has been removed. There is just a bulletin—or a booth there that the telephone was in.

Q. But wasn't there a sign on the bridge for boats to recognize, saying there was a telephone up there, up to some recent time?

A. There was a sign put on the bridge saying there was a telephone in the bridge house at one time, and later when they built the house alongside the auxiliary motor shed, the sign was moved down and placed on that build-

ing. I do not remember whether the sign is still on the building or not.

Q. Mr. McKenna, did any boats stop there and use the telephone?

A. Yes, sir.

Q. For what purposes did the boats use the telephone?

A. Well, lots of times, boats become distressed in the waterway and they have to use the telephone to procure help into port, and a lot of times boats passing through, freighters, why, they use the telephone so as to inquire as to whether there is any pick-ups like from Jacksonville, as they continue through the waterway, and a lot of the water transportation companies call us at Sister's Creek to inquire as to whether certain boats have cleared the bridge, and the time they cleared them.

Q. They call down to find out what time boats clear the bridge in order to know what time they went through?

A. Yes, sir, some times—

Q. As to what time they would dock?

A. Yes, sir, some times they have been due at the dock, and proceeded northward, and they wanted to know if they cleared the bridge, and they some times have to catch them at the different bridges, or the different stations where they can locate them.

Mr. Hartridge:

That is all.

Re-Cross Examination.

By Mr. Smith:

Q. Mr. McKenna, do you remember a Mr. Sidney A. Britt of Washington, D. C.?

A. I can't say that I do, Mr. Smith.

Q. And do you recall a man by the name of Edward D. Gray from Illinois?

A. I can't say that I do.

Q. Can you inform the Court how either of those men got to your camp?

A. No, I can't.

Q. They are the two out of state men shown by these cards, are they not?

A. Yes, sir.

Q. Have you destroyed your own record that you keep of calls placed over the Sister's Creek telephone?

A. I don't keep a record, Mr. Smith. They keep a record of the calls at the toll house, and when the bill is presented on the first of the month to me, I check the bill with your manager, Mr. Pooser, and pay him what the bill is.

Q. And then you destroy your record?

A. All I keep is the receipt that Mr. Pooser writes me.

Q. Back in 1941, isn't it true that you kept those records for some length of time?

A. I kept some records, yes.

Q. What is the explanation for not keeping them since 1941?

A. Well, at that time we paid for incoming and outgoing calls. In order for me to receive a call from Jacksonville, I had to guarantee the North Shore Corporation the twenty-five cents before they would hook the party in for me to talk to, and at that time Mr. Pannell, who was manager at that time, insisted I keep a record to check with his. Since that time, and since the telephone has been returned, I will say I have been very friendly with your Mr. Pooser, and I have been rather friendly with him, and I have kept no record. I didn't feel that it was necessary.

Q. And you destroyed your old ones?

A. Yes, sir. I had no occasion to hold them any longer.

Q. And that was all since this suit started that you destroyed your records?

A. No, sir, not since this suit was started.

Q. This suit started in September, 1941. When did you destroy your records?

A. I do not know when I destroyed them.

Q. Didn't you still have them in the proceeding before the Florida Railroad Commission in the fall of 1941?

A. All I had, as I remember, was the receipts, and I brought them in and presented them to Mr. Hartridge, and I think Mr. Hartridge had those receipts in his possession. I do not know whether he destroyed them or not.

Q. Didn't you also have a record of the calls you kept during your business with Mr. Pannell?

A. Yes, on sheets we used to have?

Q. Yes.

A. Yes, but I brought them to Jacksonville.

Q. They have been destroyed since the fall of 1941?

A. I do not know whether they have been destroyed or not, but I turned them over to Mr. Hartridge.

Mr. Smith:

That is all.

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(Witness excused.)

The Court:

Call your next witness, please.

199 H. T. OVERSTREET, having been produced and first duly sworn as a witness on behalf of the Plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Boggs:

Q. Please state your name and place of residence?

A. H. T. Overstreet is my name, and my residence is New Berlin, Florida.

Q. How long have you lived at New Berlin?
A. About twenty years.
Q. About twenty years?
A. Yes, sir.
Q. And you were at one time an employe of the defendant, the North Shore Corporation, were you not?
A. I was.
Q. And for how long a time were you an employe of that company?
A. About thirteen years.
Q. And when did your service terminate?
A. On April *31*, 1938.

Mr. Smith:
Thirty what?
A. '38. 39, rather.

Mr. Boggs:
Q. '39?
A. Yes, sir.
Q. And during the period of this service, were you at all times in one job, or did you do several different things?
A. Well, I did several different things in those thirteen years.
Q. Yes, but what was your job during the period from October 24, 1938, to April 31, 1939?
A. Bridge tender.
Q. At what bridge?
A. Sister's Creek Drawbridge.
Q. Sister's Creek Drawbridge?
A. That is right.
Q. And you still, since that time—Do you still have occasion to make frequent use of this toll road yourself?
A. I go over it once, a round trip a day now.
Q. And how long have you been doing that?
A. Well, I have been doing that now for two years.

Q. For two years?

A. Yes, sir.

Q. And what do you do? You are working here in Jacksonville now?

A. I am.

Q. That is the occasion of your making this daily trip?

A. That is right.

Q. And after you left the company's service and before you went to work in Jacksonville, what were you doing?

A. I am employed with the Coast Line.

Q. The A. C. L.?

A. The Atlantic Coast Line.

Q. The Atlantic Coast Line?

A. Yes, sir.

Q. Where did you work for them?

A. First running from New York to Miami on the Streamliner Champion, and then I got on the Southern Division from Savannah to Jacksonville.

Q. Now, Overstreet, have you had occasion from time to time to notice that there were cars bearing foreign license tags using the road and the bridge?

A. I did.

Q. And have you made any comparison in your own mind between the number of cars bearing foreign license tags and those bearing Florida license tags during the period since October 24, 1938, up to now?

A. Well, I haven't any accurate check.

Q. You never kept a record?

A. No, no record. I didn't have any record.

Q. Well, from October 24, 1938, up to the time of the tire and gas rationing, did you notice or not any falling off in the traffic in general, since the tire and gas rationing?

A. You mean prior to 1938 up to the time—

Q. I mean, after the tire and gas rationing went into effect, what effect did that have on the volume of traffic on the road?

A. A great effect, I could tell that. It fell off.

Q. It fell off?

A. Yes, it fell off considerably.

Q. What effect, in your judgment, did that have on the volume, or, rather, on the percentage of foreign licenses as against Florida licenses?

A. Well, it had a great effect. You never see any foreign cars much after gas rationing.

Q. You mean, you saw a larger percentage of foreign licenses before tire and gas rationing went into effect?

A. That is right.

Q. Now, up to, say, January of 1942, and beginning October 24, 1938, you have there a period of time of approximately three and almost a quarter years. Now, during that period, what would be your best and most careful estimate as to the percentage of cars bearing foreign licenses as contrasted with those bearing Florida licenses?

A. Well, I could only give that to my estimation at the time I was on the bridge.

Q. Yes.

A. Because then was when I gave—I could give my testimony of noticing it because other than that I wouldn't be on the road long enough, but I was on the road while at the bridge at all times.

Q. Well, now, during that period of time, from October 24, 1938, to the end of your service with the company as bridge tender, during that period, what would you say was a safe and reasonable estimate of the percentage of cars having foreign licenses?

A. Well, if I have to give my estimate, I would estimate, including all groups, trucks, and everything, at the time, which usually drive over the road, that had out of

state licenses, around, I would say, between twenty and twenty-five per cent.

Q. Between twenty and twenty-five per cent?

A. Yes, sir.

Q. Now, when you were bridge tender during that period that we have just been talking about, did you have occasion from time to time to become acquainted with the occupants of some of those cars that carried foreign licenses?

A. I did.

Q. And did you find out in such cases, and in some instances, whether such persons were making a journey from another State into Florida, or from Florida to another state?

A. Well, there is quite a few times during the time I was at the bridge that I had a chance to talk with the chauffeurs of some cars that would come down there, and they would contact the owner by boat at Sister's Creek bridge, and sometimes it would tie up there for some time, and they would use his car going to and from the bridge into the city.

Q. I am talking now about people using the cars from another state?

A. Well, they were from another state.

Q. I know, but the car making a journey interstate from one state to another?

A. He made a journey from the State of Georgia in on the road.

Q. Yes.

A. And he would meet the people on the boat.

Q. Yes.

A. They would use the car, and then when the boat would leave, the car would go back.

Q. Would that happen—Was that only one instance or a number of instances?

A. Quite a few times it happened.

Q. It happened quite a few times?

A. Yes.

Q. Now, did you have occasion during that period of service to notice how the guests at the Ribault Club, when they first came to the Club in the season, how they were transported out to the Club?

A. Well, during the first—Of course, this was before that time, before 1938.

Q. No, I am talking now about—

Mr. Smith:

I suggest this question should be limited to the period after October 24, 1938. This man's service was some twelve and a half years.

Mr. Boggs:

I so limit the question.

Q. The season then of 1938-39, how were the guests of the Ribault Club, if you know,—how were they transported to that Club?

A. They were generally transported by—there was a few that used a car, I know, that owned the residence down there, and the guests, the others was transported by hired cars out of the city.

Q. The City of Jacksonville?

A. Yes, sir, and some would be transported by the cars that was owned by the Club,—station wagon and other cars.

Q. Yes. And how was the baggage, during that period, transported?

A. The baggage would come down with the station wagon, and some times trucks.

Q. Now, was the method of transporting guests to the Fort George Club substantially the same or different from that of the Ribault Club?

A. Practically the same, because they owned a station wagon, and they would transport their guests, and they had trucks that would get the baggage.

Q. And the guests, of course, wouldn't all come at one time, would they?

A. No, sir.

Q. So, would you say then that the use of those vehicles for the transportation of guests to those two clubs, were used rarely or at frequent intervals throughout the season?

A. During the season they would make from one to two trips a day.

Q. Now, did you have occasion to notice yachts anchored off either or both of those clubs during that period of time?

A. Yes, sir. And if I could go back to the question, I used to work on a yacht a little while between the time I left the North Shore bridge and the Coast Line Railroad. I was a captain of Mr.—during that time I was on—it was the Marron then, and belongs to a man that owns the King Distributing Company, Mr. C. W. Faulk.

Q. The name was what?

A. Faulk. He had the boat and we would go down and anchor ourselves off these clubs, and around there.

Q. Now, was that during the period when you were working for the company?

A. No, sir, I had just left the company; that was between the time I left the company and the time I went with the A. C. L.

Q. Yes.

A. There was a period of a few months.

Q. And was it common practice or infrequent that yachts would be anchored there off the Clubs?

A. It was common during the season.

Q. It was common during the season?

A. Yes, sir.

Q. And what, if anything, do you know about any transportation of either passengers or supplies coming

from any other states to those yachts or from the yachts, either passengers or supplies?

A. Well, I couldn't tell just whether it was passengers or supplies would come. I know they would get supplies aboard, and also passengers would come and leave, but not knowing where they came from, I couldn't just say. There are one or two incidents I know they had one or two little breakdowns, and they had to send clear to Flint, Michigan, and had them sent by air mail to them before they could get repairs.

Q. Some parts for the machinery of the yacht?

A. Yes, sir, some parts of the machinery.

Q. I see.

Mr. Boggs:

Your witness.

Cross Examination.

By Mr. Smith:

Q. Overstreet, do you remember when it was that this part was sent for from Flint, Michigan?

A. No, sir, I do not remember just the date, because I didn't have any reason to put it down.

Q. Do you know what year it was in?

A. What year?

Q. Yes.

A. It was in 1938, but I do not know just what month.

Q. The season down there usually begins about Christmas time each year, doesn't it?

A. The Clubs open—When they first started, they opened some time a little before Christmas and along towards the last they got where they opened right, or some times just enough to get guests in there for the holidays, and some times it would be after New Year's.

Q. Now, do you know how many guests registered at those clubs, or either of the clubs, for the season commencing in December, 1938, on up to now?

A. No, sir, I couldn't say.

Q. Do you know how many registered at the Ribault Club, or approximately how many went to the Ribault Club in the 1938-1939 season?

A. I wouldn't give you any statement, because I wouldn't have any reason to know.

Q. You were there on the bridge, weren't you?

A. I didn't know where the cars was going, as guests to the club or just using the road.

Q. You know some guests came down in yachts, didn't you?

A. I have seen them contact the club in yachts, by me being in the club after I left the A. C. L. Railroad. I was with Mr. Barnett for two seasons, on his yacht, which anchored in the club basin.

Q. So you know some persons attending the club came by yacht, don't you, Overstreet?

A. Yes, sir.

Q. Could you give the Court any idea about how many people came down in yachts to go to those clubs?

A. No, I wouldn't give him any. I wouldn't make any statement of the amount.

Q. Would you say as many on the average as ten yachts in a season?

A. I wouldn't say that.

Q. Would you say as many as five?

A. Well, I will say, as I said before, I wouldn't give him any number, because I have no way of knowing.

Q. Can you give the number of people that came down in their cars and came over Heckscher Drive?

A. No, sir, I wouldn't have any statement of the people. Now, if you was telling me to give statements of the yachts that came through the bridge, I could tell you that.

Q. We are not concerned with them, but the folks on the Island and at the Clubs now.

A. Yes, sir.

Q. Did I understand you to say there were one to two trips over Heckscher Drive every day during the season when the clubs were open, bringing either guests or baggage back and forth from Jacksonville?

A. When I was on the bridge, I seen the trucks; I knew the station wagons, and the trucks from the Ribault Club, and the truck from the Fort George Club.

Q. I did not ask you whether you knew the trucks. I asked whether they made one or two trips every day?

A. Some days two and some one. Every day of that season they would come in and get supplies, baggage or passengers, they would have either one or the other when they would come in.

Q. That season is about 120 days long, isn't it?

A. Some times. It varied. The season varied with the club. The guests. The season of the club varied according to the guest register, is the way I figure it, because some times the season was longer than others.

Q. The record before the Court shows that neither club had more than eighty guests in any of those seasons. Do you still say that that road was used every day during the season, at least and some times twice, with the guests—

A. I will say that—

Q. —and get guests from the station, or baggage from the station and go back?

A. I didn't say to get guests and baggage every day, but supplies, food, ice and everything. That is what I said.

Q. Oh.

A. That is what I said.

Q. All you are telling the Court then is that the road was used every day by the club trucks?

A. And station wagons.

Q. You won't tell the Court they got passengers from the Union Station, guests for the clubs, or got the guests' baggage, every day, will you?

A. I wouldn't say that because I would not know what was on the truck. I wouldn't have a chance to know. In fact, it wasn't my business to stop the cars and see what was on them.

Q. You have no way of giving the Court much of any idea how many trips made by those trucks were to get guests or baggage at the station?

A. I couldn't see just what amount of that they was carrying, or bringing baggage or guests, but I know they made the trips.

Q. Now, have you any way of informing the Court as to the number of cars traveling over the road under foreign licenses which were either coming into Florida or on the way out of Florida, during the 1938-1939 season; that is, from October 24, 1938, until the time you left the company?

A. Well, the only thing that I could give them was that at the time, seeing the cars pass the bridge at the time I was at the bridge every day and also whenever the gates of the bridge was closed to pass a boat, and they were opened; then I would be just the same as a toll man, and I would notice the foreign licenses; out of state licenses, and that is why I said I could only estimate it.

Q. You testified that quite a few times people said they were either coming into Florida or going out of Florida when you spoke to them. I want to know how many such instances you can identify, or approximately how many?

A. Well, I won't say there was too many during this particular time, because I was only there six months, around six months at the bridge. I mean at the bridge only prior to the time, October 24, 1938, up until the time that I left the company was about six months, nearly that.

Q. There was one out of every five cars that had foreign licenses?

A. Well, I won't say that. Some times you might get five at one time that had foreign licenses.

Q. I mean, on an average, one out of every five had foreign licenses?

A. Well, not generally. Maybe some days you get more, and some days less.

Q. We are talking about an average; one out of every five?

A. No, not cars, but they had some trucks.

Q. Including everything, cars and trucks, one out of every five had a foreign license?

A. Well, some days, I would say; some times it would be more, but I would have to sum that up. I believe that during the season that they were using those camps, as fishing camps, in which they was right in the midst of the fishing season down there, around April, it starts around April, May and June, I would say that they would be, but that during that. I won't say the year around.

Q. All right. Now, what was it the year around?

A. I do not know. I wasn't there all the time you refer to. I couldn't go back any further than October 24th, because, why, then I wasn't there.

Q. You testified to the Court, as I understood you, that twenty to twenty-five per cent of the traffic over the Sister's Creek bridge from October 24, 1938, to the time you left the company, bore foreign licenses?

A. That is right.

Q. Do you say during that period of time one of five on an average that came across the bridge, had a foreign license?

A. I can't go back any further than the 24th of October, so I can't give you that.

Q. Your last answer was that during the fishing season, April, May and June, there would be one out five?

A. That is what I said, during that time.

Q. All right. Let us go to October up to March, 1938 and 1939, one out of every five had a foreign license?

A. Well, during the—Well, I am including that, because they have in September—they have a hunting season down there and marsh hunting, and some times more hunters from the State of Georgia come there than they do from the State of Florida, to the Sisters' Creek Camps.

Q. Just answer the question directly, please. Between October, 1938, and March to 1939, do you say that on an average one out of every five cars had foreign licenses?

A. I still say twenty per cent. That is what I figure, between twenty and twenty-five per cent of the use, where it was cars, trucks or what—we will say vehicles, motorcycles, and all of those.

Q. Had foreign licenses on them?

A. Yes, sir.

Q. Were there any bicycles that you could identify from out of town?

A. Well, there was no licenses on them.

Mr. Smith:

That is all.

Re-Direct Examination.

By Mr. Boggs:

Q. Overstreet, tell the Court whether you are or are not in any way interested financially in the result of this suit at the present time?

A. I am not.

Q. Isn't it a fact that you have settled your claim against the North Shore Corporation?

A. I have, and I have nothing against them.

Q. It means nothing to you who wins or loses this case, does it?

A. It doesn't mean anything, your Honor, and I am a loser now, because I have lost two days.

Mr. Boggs:
That is all.

Mr. Smith:
No further questions.

The Court:
Come down.

The Witness:
Thank you.

(Witness excused.)

The Court:
Call your next witness.

Mr. Hartridge:
Mr. Booth.

218 JAMES F. BOOTH, having been produced and first duly sworn as a witness on behalf of the Plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Hartridge:
Q. Please state your name?
A. James F. Booth.
Q. Where do you live?
A. Charleston, Indiana.
Q. Did you ever work for the North Shore Corporation, Mr. Booth?
A. Yes, sir.

Q. During what period of time did you work for them?

A. Why, I worked for them from along in 1936, the first part of 1936, until October 9, 1941.

Q. What was your work when you were working for them?

A. Well, I started out working for them as a lineman. I was doing that for some while for Mr. Pannell, and later on he made me foreman over the maintenance crew.

Q. You were foreman of the maintenance crew?

A. Yes, sir.

Q. What did your duties as foreman of the maintenance crew consist of?

A. Any repairs to be made on the road, line, power line, telephone line, or anything.

Q. Did you ever do any work on the Sisters' Creek Bridge, Mr. Booth?

A. Yes, sir.

Q. What did that work consist of?

A. Well, I have replaced fenders to the draw, at least twice. I have put caps in that bridge under the draw span, under each end of the draw span next to the far side, Sisters' Creek Camp. It was back one span, I believe. I had to put in that. I also put in stringers; put in bridge rails, bannisters; done work all over, and then worked on the electric motors that raises the draw.

Q. Did these laborers in this crew work with you sometimes?

A. On all except the motor, they didn't do any of that work.

Q. How many hours a week were you employed?

A. When I started out with them I was employed fifty five hours. Ten and a half hours a day five days a week.

Q. And how much money?

A. Twenty-five dollars.

Q. Twenty-five dollars?

Mr. Hartridge:

Q. When the men were not working, what duties did you have to perform?

A. Well, the work I done on the pole lines and the telephone, the power lines and the telephone line, and I did work around the tool house there, for I had my tools to keep in shape, and I worked on—there was a lot of things there that I worked on. For instance, a rake we made to pull behind a mowing machine. I worked on that, and different things—painting. I did do some painting.

Q. Did you have the right to hire and fire laborers?

A. I would have to get orders from Mr. Pannell whenever a man was hired or fired. It took me a week to hire a man on that road.

Q. The answer alleged that you had the right to hire and fire?

A. I took orders from Mr. Pannell. If he didn't want a man fired, he wasn't fired, and if he didn't want a man hired, I wouldn't hire him.

Q. But did your duties consist of going down the road and making inspections and keeping and replacing timbers or poles or whatever was necessary?

A. Yes. I done that, although most of the time when I made these inspection trips, I would catch Mr. Pannell at the tool house, and go down with him in the afternoon, and at times we would be down the road until dark.

Q. Did you ever build any structures down there?

A. I built a house.

Q. Did you get any lumber to build the house?

A. Yes, sir.

Q. Do you know where the lumber came from?

A. The house lumber came from Mr. Ogilvie's back here. We did get some bridge material, too.

Q. What bridge material did you get?

A. Some lumber to put railings on the Sisters' Creek bridge; cypress.

Q. Are there any other draws besides the Sisters' Creek drawbridge on that road?

A. There is drawbridges at Clapboard Creek, and one at Cedar Creek.

Q. Did you ever have occasion to open those two drawbridges?

A. I have opened both, the Cedar Creek especially, more than Clapboard.

Q. How many times would you say you had to open the Cedar Creek Bridge?

A. Well, I opened the Cedar Creek Bridge—

Mr. Smith:

Just a moment. I object on the ground there is no foundation for such proof laid in the answer. There is no claim this man operated as a drawbridge tender on any drawbridge. It seems to me it is beyond the scope of the pleadings.

The Court:

Did this drawbridge have a tender?

Mr. Smith:

No, sir. They were required to give some length of notice before the draw had to be opened. It wasn't necessary to keep one there, because it was opened only infrequently.

The Court:

Were there various employes of the company assigned to operate them?

Mr. Smith:

Honestly, I don't know. They have been opened so infrequently since Mr. Pooser has been with the company.

The Court:

I will overrule the objection, and let the testimony go in on that.

Mr. Hartridge:

Q. About how many times have you had occasion to open it?

A. Well, the Duval Engineering Company hauled shells up the Rockaway Beach Road, at the dock that goes off Main Street. Rockaway Beach Road is about one and one-half miles above Cedar Creek Bridge. They would come in there once a night, and it would seem to me it was about six weeks they came in with a lighter and some times two lighters of shells, and take it up at night there.

Q. Now, at Clapboard Creek, was there or not a dredge up there dredging shell?

A. There was a dredge up there, but it was before this. I found out it was before. It was along in 1937, I believe.

Q. Now, when you were foreman, and notice was given you to open the drawbridge, you were the man that had to do it, as foreman?

A. That is right.

Q. Did it require—Were you required to have men available to open these draws?

A. Yes, sir.

The Court:

Now, that is the draw where they were not attended by a regular attendant?

Mr. Hartridge:

Yes, sir, it was not used frequently.

* * * * * * * * *

Q. Mr. Booth, did you do any manual labor, that is, work of your own, any carpenter work?

A. Yes, sir.

Q. About how much of it did you do in a day? Did you work at it half of your time, a quarter of your time, a third of your time or five per cent of your time?

A. I worked at it most of the time. I couldn't say.

Q. Would you say you put in over half of your time at manual labor?

A. Yes, sir.

The Court:

Will you describe yourself as what is known in common parlance as a working foreman?

A. Working forman?

Q. Yes.

A. Well, sir, your Honor, I would have to get down there and do it, whether changing those caps, or those sills, I would have to get down there and show them how it had to be done, or have to be putting in stringers myself. Most everything that was to be done, would have to be put in bridge stringers and the joists, that the deck lays on, and caps that lay across the top of the piling, that could be a dangerous job if it wasn't attended to, and if somebody didn't know what to do. That bridge is on jacks, jacked up in there, on to screw jacks, and traffic is going through there all the time, and over the bridge all the time, and if you don't fix your scaffolds over there just right, you are liable to let somebody into the water, and some of it is pretty deep out there.

Q. Mr. Booth, did you have anything to do with the construction of that telephone line?

A. I did. I built it.

Q. You built it yourself?

A. Yes, sir.

Q. And did you and your crew take care of the maintenance of it?

A. Yes, sir.

Q. And these negro laborers in this thing did all the maintenance work on the road, bridges and telephone line?

A. They didn't do so much on the telephone, but I built the telephone line from No. 1 toll house to Sister's Creek. I don't think they had much to do with that. Joe Lang probably worked on it some, but the telephone line from Sisters' Creek to Fort George, the crew worked on it, everybody, all of us.

Q. Did you ever see any foreign cars on that road, Mr. Booth?

A. Oh, yes, I have seen foreign cars.

Q. Did you see few, or many or what?

A. Well, I wouldn't estimate the percentage, or anything like that, because I can't say. That is all there is to it. I won't do it. I don't feel like I am in a position to do it, because cars would pass while I was working, and I wouldn't know nothing about it. I have noticed cars, I have had to work there on the bridge when they were going over, and I have noticed there would be foreign cars, and there would be local cars, but I couldn't say how many, or any percentage. I wouldn't do it.

Mr. Hartridge:

Your witness.

Cross Examination.

By Mr. Smith:

Q. Mr. Booth, the telephone line from No. 1 to Sisters' Creek was built before October 24, 1938, wasn't it?

A. Yes, sir.

Q. These stringers you say you put in on Sisters' Creek Bridge, when were they put in?

A. Stringers?

Q. Yes.

A. They were put in all along during the time I worked there. Very often that we would have a span to go out there and we would have to put them in.

Q. Can you tell the Court what weeks you or your laborers worked on the Sisters' Creek Bridge, and what weeks you didn't?

A. I can take the time books there and do it.

Q. All right, sir. What books do you want?

A. Any one.

Q. Examine your time books and tell the Court what weeks you worked on the Sisters' Creek Bridge and what weeks you did not? Beginning with October 24, 1938.

A. He doesn't give it bridge by bridge here, Mr. Smith. He gives, "Charged to bridges" and charged to "roads". That is the reason I thought I could do it, but I can't do it on which bridge it is. It is charge to bridges so much, and to roads, so much. That is the way I figured I could do it, but I can't because it does not show which bridge.

Q. Can you tell the Court ir what weeks the laborers worked on the telephone line or that you worked on the telephone line, commencing with October 24, 1938?

A. When it was built?

Q. That was before October 24, 1938.

A. Oh, no, Sisters' Creek to Fort George, that was after October 24, 1938.

Q. That was new construction work?

A. Yes, sir.

Q. That wasn't maintenance work?

A. That is right.

Q. I am inquiring of you about the weeks on which any member of the road crew, or yourself, worked on the telephone line. Tell the Court what weeks you worked on the telephone line?

A. I can't do that. I worked on it practically every week. There was something to do on the telephone line practically every week.

Q. Did the laborers work on the telephone line every week?

A. In some months.

Q. Did you work on the telephone line every week?

A. There might have been some weeks, I didn't. I would not say every week.

Q. Did you do all of the maintenance work on the telephone line?

A. I did it all except putting in the switch out here at No. 1 toll house. It is a switch that they throw so they can relay the calls down the road. They can cut off down the road and talk to Jacksonville, and then relay it on down. Throw the switch there, and Mr.—I do not know his name—he is a man from the Southern Bell Telephone Company here in town come out, and he and Pannell worked on the switch.

Q. You didn't put that in?

A. I did not.

Q. Except for that?

A. He came down the road hunting for trouble. The line was making a lot of noise, and he brought his instruments down looking for trouble, looking for the cause of the noise on the line, and besides that I done everything that was to be done with the telephone.

Q. Up until the time you quit?

A. Up until the time I was discharged, yes, sir.

Q. Tell the Court exactly what had to be done in maintaining the line?

A. Well, people fishing on the bridges, they would break those lines so often.

Q. The lines were iron instead of copper wires, weren't they?

A. No, sir, copper across the bridge.

Q. Copper across the bridge?

A. Yes, sir.

Q. They are copper?

A. No, sir, part of it is copper. There is one line from —You see, when that telephone line was built, there was one line,—there was just one line down the road?

Q. You mean one wire?

A. One wire, that is it, and later on we strung another wire to make it a circuit, and took it—it wouldn't work in with the Southern Bell set-up here in town. We took the ground wire out. It wouldn't work in with the Southern Bell set-up here in town. They couldn't get connections that would be any good over that grounded line, and we strung another wire to make the circuit.

Q. All right. Maintenance work consisted of piecing the wire line back together when the fishermen would break it on one of the bridges. What else?

A. There would be trouble on the telephones.

Q. What sort of trouble?

A. Well, things would go wrong with the telephone. For instance, if the door was slammed, or in some form—

The Court:

Just a minute. Is it your position that someone else did all the maintenance on this line?

Mr. Smith:

That was our understanding, but as I stated to the Court when we started, we since we filed our answer, we have had reason to change our minds about this. We are somewhat at a disadvantage back of October 1st, 1941.

The Court:

The point I make is this: Is it your position this witness did not do that work, or that it was done by someone else.

Mr. Smith:

This record is one on which the Court could not make any other finding than that he did maintenance work.

Q. Can you tell us how much time you spent working on the telephone line?

A. No, sir. The only answer would be when we were instructed to work on that line we worked on it, but to do it as to day after day until we finished, but as far as

maintaining the line, I would not have any way in the world to tell you that.

Q. You just worked on it whenever they needed it?

A. That is right.

Q. The same thing is true of Sisters' Creek Bridge, is it not?

A. Yes, sir.

Mr. Simth:

Now, do I understand your drawbridge at Cedar Creek for one period of time you opened it every night for six weeks?

A. Well, I do not know about every night now.

Q. All right. Can you fix the six weks period? When was it?

A. It was when they were building Main Street.

Q. Do you know in what year and what month?

A. No, I do not. I never have found that out.

Q. Now, the movement of shell that you described under the Cedar Creek Bridge was from the shell dredging in Cedar Creek north of the Sisters' Creek Bridge up to a point just east of U. S. Highway 17 and about two miles north of the road; is that correct?

A. Where it moved to?

Q. Yes.

A. That is correct.

Q. The whole movement was inside of Duval County?

A. That is right.

Q. You remember no instance of opening the Clapboard Creek drawbridge after October 24, 1938?

A. I don't think it did open.

Q. And the six weeks period of time then is only the time that the Cedar Creek span was opened?

A. No, sir, I think we opened that drawbridge for them to go up there to build that dock, because I had to cut the power at Main Street on the power line, and go

down there and climb a ladder on the pile driver and lift the lines over it.

Q. And while they were hauling shell before that?

A. Just before, and they are the only occasions on which the Cedar Creek span was opened.

Q. That is all?

A. That is all I can remember.

Q. Now, tell the Court, Mr. Booth, what your authority over the laborers was?

A. Well, I had authority to work them. That was all. To tell them what to do, where to go to work.

Q. You told them what to do and where to go to work, is that right?

A. That is right. Where they worked at.

Q. And when to knock off?

A. That is right.

Q. If an emergency came up, you would call for them and tell them where to go?

A. If I needed them.

Q. You were in complete charge of the road crew, except when it came to hiring and firing them; is that what you testify?

A. No, sir, I would get orders every afternoon from Pannell. He was on the road every afternoon.

Q. Isn't it a fact that you often told Mr. Pannell in such conferences as you had with him in the afternoon that trouble had developed at a particular spot and you were going to take the crew there the next day so he could object if he wanted to?

A. Well, I do not know. He generally had enough work laid out where he had something for me to do. I didn't have much to do with that.

* * * * * * * * *

Q. Mr. Booth, in the time book, which is in evidence, the time book which I now hand you, which shows week

ending April 20, 1939, it shows a charge "Sisters' Creek Draw, $10.40." Is that the type of entry that you had reference to that would show the weeks in which you worked on the Sisters' Creek draw-bridge, Mr. Booth?

A. Well, that is the way I thought they were all made out. That is the reason I said I could do that. But on those other books, they are not made out that way. Now, wait a minute. See here, the first charge to bridges, it doesn't say which bridge, where it is or anything about it. Now, that was probably the man that made that out, Mr. Holder probably—

Q. Just a moment, please. If you will notice April 20, 1939, charge, Sisters' Creek bridge, $10.40, and also charge to bridges, $22.68. Haven't they there kept the Sisters' Creek draw and the other bridges separate?

A. See this over here. What does that say there? Miscellaneous road and bridge expense.

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Re-Direct Examination.

By Mr. Boggs:

Q. Mr. Booth, I call your attention to the time books, 4, 5 and 6, which have been put in evidence in this case, and you will find on each payroll date the total amount of the payroll for the time distributed to the various items, such as bridges, roads and toll house, and so forth. What, if you know—strike that. Where, if you know, did the keeper of that book get his item for distribution?

A. I do not know.

Q. Did you make any distribution yourself?

A. No, sir. No, sir, I put the time—I put my time down and sent it in to him on the report, the hours we worked, where we worked, and how long each day.

Q. But you did put down where you worked?

A. I put down where we worked.

Q. Is that correct?
A. That is correct.
Q. And that record you gave the timekeeper every day?
A. Every day, that is right.

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235 C. V. HOLDER, having been heretofore produced and first duly sworn as a witness on behalf of the Plaintiffs herein, was recalled to the witness stand and testified further as follows:

Further Re-Cross Examination.

By Mr. Smith:

Q. Mr. Holder, I hand you the time books which are marked as Plaintiffs' Exhibits 5, 4 and 6, in evidence in this case. These are the time books on which you made your reports to the main office of the North Shore Corporation, are they not?

A. These are the time books I turned in, yes, sir, for the payroll.

Q. At the foot of each lefthand page there appears to be a legend, charge to road, and charge to bridges, or charge to some specific item. Are those legends in your handwriting?

A. Yes, sir.

Q. Explain to the Court just exactly what they mean, please, sir?

A. Well, these are derived, the distributions of this payroll are derived from a report that the road foreman made at the closing of each week's business, or each week's work, and in turn sent this report to me. Then I made a report, this payroll book from his report, and the distributions on this book are derived from his sheet that

he turned in to me, which showed where each day's work was done, how many hours was spent on each particular place, whether it was on a bridge, or on the telephone line, or whether it was on the road, or whether they were working on the property, to improve that, the distribution was charged from that report.

Q. Is that compilation accurate to the extent that shows during any work week where the men worked during that week?

A. I don't know as this book has, but if you get your sheets where I turned in a weekly time sheet, it will show accurately where they worked.

Q. Well, your work, as far as you know, was accurate in compiling that book?

A. I compiled it from the time sheets.

Q. There was no making of false entries in connection with that work?

A. No, sir.

Mr. Smith:

I think that is all.

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(Witness excused.)

237 MR. WILLIAM R. STEWART, having been produced and first duly sworn as a witness on behalf of the Plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Boggs:

Q. Please state your full name.

A. William R. Stewart.

Q. Where do you live, Mr. Stewart?

A. On Moncrief Road at the present time.

Q. At the present time. And before that, where did you live?

A. New Berlin.

Q. New Berlin. And you were at one time in the employ of the North Shore Corporation, were you not?

A. I was employed twice by the North Shore Corporation.

Q. Twice. Now, what was the first of your employment with that corporation?

A. I was night toll collector at the No. 2 toll house.

* * * * * * * * *

Q. And what did you do when you went back to work for them?

A. I was maintenance foreman.

Q. And that was after Mr. Booth had left the company?

A. I succeeded Mr. Booth.

Q. What were your hours supposed to be as maintenance foreman?

A. Forty-four hours a week.

Q. Divided up how?

A. Eight hours for five days, and four hours on Saturday.

Q. And what was your rate of pay?

A. Twenty-five dollars a week straight time.

Q. And as to that 44 hours a week, state whether or not you were always on duty at least forty-four hours a week?

A. I tried to be, if it wasn't—if it was raining, or something like that, and we could not work, I wasn't, but other than that I was.

Q. And what were the nature of the duties that you performed as maintenance foreman?

A. Well, I found the work to be done and helped to do it, like working on the bridges, or any stringers to take out, or boards to be out, or holes to be patched in the road, anything that pertained to the upkeep of the road and bridges.

* * * * * * * * *

Q. Now, did you have anything to do with repairing the telephone lines?

A. No, sir.

Q. Not at all?

A. Not at all. I fixed it, or something, if I saw it, but as far as it being in my line of duty, it was not. It was not in my line of duty at all.

Q. Who attended to that when you were maintenance foreman?

A. A fellow from the Southern Bell named Stewart, I don't know his initials, but his name was Stewart also.

Q. Did you ever have any occasion to do any repair work on the Sisters' Creek bridge?

A. Yes, sir.

Q. What was the nature of that repair work?

A. Well, I recall three caps that were put in there.

Q. What do you mean by caps?

A. Well, it is a piece of timber 27 feet long, and it is 12 by 14 inches, and it sets on piling.

Q. It sets on the piling and helps support the bed of the roadway on the bridge?

A. The stringers set on that was on that foundation. In other words, the piling, the cap and the stringer, and then the decking goes on it.

Q. Well, who did repairs, if any, with respect to the mechanical operation of that Sisters' Creek Bridge? Sup-

pose the power wasn't working right, or the hoists wasn't working right, or something, who would do that kind of work?

A. There was some fellow, I don't know who he was, but he was an electrician, did that.

Q. You didn't do any of that?

A. I never worked on the motor.

Q. I hand you Plaintiffs' Exhibit No. 2, which is entitled daily report, and show you the column entitled, "Foreign" immediately following the column "Total Cars." During the time when you were a toll keeper, do you remember such a form similar to this being in use?

A. Yes, sir, there was one similar to that. But as far as putting down the accurate number of foreign cars, that were there, we never, or at least I never, I don't know about the rest of them, but I just made an estimate of how many I figured had gone down.

Q. Did you ever have any instructions of any sort about whether you should keep that record, or should not keep it?

A. I was never told to keep it correct or not to keep it correct.

Q. Not to keep it. As a matter of fact, did you keep any sort of daily sheet, or similar device, for recording the numbers of foreign licenses?

A. No, sir, I never. I never recorded them. I would just, to the best of my ability, I would put down what I thought was about right.

Q. Now, attached to this main sheet in Exhibit 2 are certain half sheets, which apparently are signed by the toll collectors?

A. Yes, sir.

Q. Was that what you kept your record on when you were toll collector?

A. Yes, sir.

Q. What did you do with those daily reports?

A. Sent them in each day, after each day's work.

Q. Sent them where?

A. To No. 1 toll house.

Q. And this column reading "Foreign"—

A. Yes, sir.

Q. That is really, you say, so far as you filled it out, it was just guess work, is that right?

A. Yes, sir.

Q. And, as toll keeper, you also had to answer telephone calls, didn't you?

A. Yes, sir.

Q. So that if a car went by while you were answering the telephone, it would be just about all you could do to either collect his ticket, that would be a fact, wouldn't it?

A. At times I have been busy, I helped to put gas in down at No. 2 toll house, and I wouldn't even get the ticket until he came back.

Q. Did you, during the period when you were a toll keeper, and again when you were maintenance foreman, you did notice foreign cars traveling up and down that road, foreign license cars traveling up and down that road?

A. Yes, sir, I did.

Q. Would you be able during either of those periods of service to form any estimate in your own mind as to what the percentage of those cars along the road was to cars bearing foreign licenses?

A. I would say twenty, between twenty and twenty-five per cent of them were.

Q. That is, during both of your periods of services?

A. The latter part, there wasn't quite so many.

Q. When you say latter part, you mean after the tire and gas rationing had come into effect?

A. Yes, sir.

Q. So it would be a lesser percentage at that time?

A. Yes, sir.

Q. The total number of cars fell off a great deal during that time, too, didn't it?

A. Yes, sir.

Mr. Boggs:

Your witness.

Cross Examination.

By Mr. Smith:

Q. Mr. Stewart, how do you account for the great increase in the proportion of foreign cars after you quit keeping a record as a toll gate collector at toll house No. 2, over what you say you observed when you were foreman?

A. I don't know as I said there was more when I was foreman than I did when I was toll collector.

Q. You said you tried to keep an accurate record by estimating it there while you were toll collector, didn't you?

A. I said I would put it down to the best of my ability as to what went by.

Q. You were trying to be fair about it, weren't you?

A. Yes, sir, and not get too many.

Q. Not get too many?

A. Sure, because I didn't want people to think that we had all foreign cars down there. What I mean to say—

Q. Why didn't you want people to think that?

A. Well, I had no particular reason. As far as the report was concerned, I just made it out to the best of my ability, the same way I did on the free passes that went over that road. I never knew exactly how many people went up or went by that had a pass. When they would come by there, he would stick his head out of the window —down at No. 2, they did not stop like they did at No. 1,

until they got these new tickets, they never stopped but you grabbed a piece of paper as they went by. A fellow would go by and holler Smith or Johnson, or what not, and I knew about them, he should have a pass, and if he did not have a pass, I was sorry, because he was already gone. And the same way with the foreign cars, when a fellow came there, and handed me a toll ticket, he was gone, and when the end of the day came, or at least when the morning came and I made up my report, I put down just about how many of them had gone by as well as how many passes had gone by, but I never kept an accurate account of it, because it would be almost an impossibility unless you stopped each and every man.

Q. My question is, why didn't you want people to say there was a lot of foreign cars down Heckscher Drive?

A. It made no difference to me whether they thought it or not. I just put them down there, that there was so many because I didn't know, but it didn't make any difference to me how many was down there.

Q. Now, state whether your reports, while you were toll gate keeper were accurate to the best of your ability as to the number of foreign cars day by day, or whether they were not?

A. They would not be exactly accurate, no, sir.

Q. Well, did you deliberately show a lesser number of cars than went by?

A. I didn't deliberately show them. I just put it down to the best of my ability, because I was standing there taking toll tickets on both sides, and on Sunday, lots of times on Sunday, we would have two or three hundred cars down there.

Q. It is a fact, is it not, that your reports did not show anywhere near twenty to twenty-five per cent of cars with foreign licenses?

A. I doubt very seriously they do.

Q. Why don't they show it, if there were that many cars?

A. I didn't pay that much attention to it, because I really didn't care that much about it.

Q. As I understand you, no part of your reports were kept with absolute accuracy?

A. Other than the tickets that I sold myself.

Q. Only on ticket sales, did you try to keep an accurate check?

A. I did, because I could count them. Each night when I went on, I took the number of tickets that were left on there, as you see, each ticket has a number, and I would start with that number that was on there when I started, and when I quit, I would take the number that was on there, on the last ticket, and in that way I could find out exactly how many tickets I had sold.

* * * * * * * * *

Q. Now, when you became foreman of the road maintenance crew, what was your authority with reference to hiring and firing the road maintenance employes?

A. Well, I never did ask just how I stood there, but I always while I wanted to let one go, or hire one, I asked Mr. Pooser if it was all right, either way. I don't think I ever hired or fired a man that I did not ask him first.

Q. Didn't you understand clearly, Mr. Stewart, that you were in complete charge of that gang, and completely responsible for what it did, when you were employed as road foreman?

A. I don't think I was told that I could hire or fire a man. As a matter of fact, after I went there, there was one man put on that I did not particularly care about seeing put on.

Q. And who was that?

A. That was—We called him Red. I can not think of his name. Mr. Pooser could probably tell you his name, or some of the other fellows.

Q. Mr. Stewart, do you happen to remember how you came to be road foreman?

A. Yes, sir.

Q. State to the Court how you came to be road foreman?

A. I went to your office one day and I asked you for a job, I asked you, at least, to start the thing off with, I told you I was going to the British West Indies, and you being a personal friend of mine, you helped me get a passport. I went to New York, but I did not get to go. I came back here and I asked you where I could get a job, and you said you might be able to help me, as there would be some changes made.

Q. In what particular respect?

A. You did not name it, not right then. And I asked you how about giving me a job then. You said, "Well, if I put you out there on the toll house, you have to shave." I remember very plainly the words, as it was. I went back out, and I saw Mr. Pooser, who had just become resident manager of the company, and I asked him again about a job, and then I came back to your office again, and you gave me the job. I think you had talked to Mr. Pooser in the meantime, or you two had talked. But I got the job that way.

* * * * * * * * *

The Witness:

You asked me how I got the job, and I was telling you the details.

The Court:

You got it through Mr. Smith?

Mr. Smith:

Q. You got it through my intervention with Mr. Pooser?

A. That is right.

The Court:
All right.

Mr. Smith:

Q. Where did you go from there? And when I told you that Mr. Pooser needed a road foreman, were you not also told by me that you would be in complete charge of the crew and completely responsible for it, with the privilege of getting or hiring of your own employes?

A. I don't know for sure about that last of your statement there, because I was—I will tell you the honest to goodness truth, I was too glad to get a job right then to know just what you said.

Q. Were you ever overruled on the firing of any man you wanted to fire?

A. No, sir.

Q. Were you ever refused permission to hire any man you wanted to hire?

A. No, sir.

Q. What work did the maintenance crew do on the road, Mr. Stewart?

A. Keeping the road in repair, filling up the holes, attending to the bridges, putting in stringers, caps, or anything that needed to be done.

Q. In addition to that, did the crew do anything to the fishing camps that were owned by the company, or any other company property?

A. Yes, sir. They repainted all the camps, and did any repair work, roofs, or anything that needed to be done to them.

Mr. Smith:
That is all.

Re-Direct Examination.

By Mr. Boggs:

Q. Mr. Stewart, when you were working your gang of men, did you work with them yourself, do manual work yourself?

A. Yes, sir.

Q. And would you say that you did or did not spend twenty per cent or more of your time while in the company's employ as maintenance foreman in doing mechanical work yourself, either alone or with these other men?

A. Well, what do you mean by mechanical work?

Q. In other words, if you put in 44 hours in a week, in an average week, would eight and one-half or more of those hours represent times in which you were doing some manual work yourself?

A. More than that.

Q. More than that?

A. Yes, sir.

Q. How many men, about, if you can remember, did you ask Mr. Pooser to allow you to hire?

A. I think I hired three men while I was out there.

Q. And how many men did you recommend to him to fire?

A. Only one.

* * * * * * * * *

Re-Cross Examination.

By Mr. Smith:

Q. Mr. Stewart, over what period of time did you spend over 20 per cent of your time doing personally work with the road maintenance crew?

A. Every day I would work with them.

Q. Have you had more than one job since you left the North Shore Corporation?

A. Yes, sir.

Q. Where did you work immediately after leaving the North Shore Corporation?

A. Duval County Jail, night jailer.

Q. When did you take that position, do you remember the date?

A. I don't remember the exact date. It was while I was still in the employ of the North Shore Corporation, about three or four days. I think I worked three or four nights.

Q. Is it not a fact that you did not notify Mr. Pooser you were taking the position as night jailer?

A. I did not, no, sir.

Q. And you were trying to hold down two jobs at once, working all night at the County Jail and all day on the road, so to speak, at the time he discovered you were working at the jail, and—

A. I had worked for three days, and was going to turn in my resignation. I had it written out.

Q. And when Mr. Pooser would come up to the road gang, and you would come out of the body of the truck with your hands over your stomach, and complaining you had pains in your stomach?

A. I did that on one occasion when I did have them.

Q. You did it on other occasions when you were simply sleeping in the truck, isn't that true?

A. No, I don't think I slept in the truck.

Q. Not ever?

A. Oh, yes, I slept in the truck when my stomach was giving me trouble.

Q. Where did you sleep or when did you sleep during that period when you were holding both jobs?

A. Well, for those three days, I didn't do much sleeping.

Q. Did you do twenty per cent of manual work with the road gang those days?

A. Yes, sir.

Q. You are sure of that?

A. I am positive of it.

* * * * * * * * *

257 MR. MILTON E. NOWLIN, having been produced and first duly sworn as a witness on behalf of the Plaintiffs herein, testified as follows:

Direct Examination.

By Mr. Hartridge:

Q. Please state your name?

A. Milton E. Nowlin.

Q. Where do you live?

A. New Berlin.

Q. Do you work for the North Shore Corporation?

A. I have, but not now.

Q. In what capacity did you work for them, Mr. Nowlin?

A. As a toll collector and as a bridge tender.

Q. They have settled the case, as far as you are concerned, as toll collector, isn't that true?

A. No.

Q. I mean as a bridge operator?

A. Yes, sir.

* * * * * * * * *

Mr. Hartridge:

Q. On these daily reports, there is a place here that says "passenger cars, total, foreign cars." Did you keep

an accurate check on those when you were working as toll collector?

A. No, sir.

Q. You did not keep an accurate check?

A. I did not.

Q. Why didn't you? It was on that form?

A. Well, it was not compulsory.

Q. It was not compulsory?

A. Nobody ever told me to keep an accurate count of it.

Q. Did you go out there and count the foreign cars, or generally watch and see what was foreign?

A. I guessed at what was, what I thought was about right, and put it down that way.

Q. Have you got any idea of the percentage of foreign cars that traveled over that road that paid tolls?

A. Well, in the winter months, it would amount to about 35 per cent, and in the summer about 25.

Q. In other words, you testified that one car out of every three or four was a foreign car? Would that be about an average?

A. That would be a good way to say it in the summer months, but in the winter, it would be higher for the out of state cars.

Q. You don't know where those cars came from, do you, Mr. Nolan?

A. Just about every state in the union.

Q. You don't know whether they came straight through or came out from Jacksonville, do you?

A. I know that many of them came from the east, came the old Eastport road, and came into the road at Eastport, and came to the toll house.

Q. Were those cars from the north?

A. From the north and east.

Q. North and east?

A. Yes.

Q. Did you ever see any cars down there from Georgia?
A. Yes, plenty of them.
Q. Do you know any people that came straight through from Georgia to that point on that road?
A. Yes.
Q. Who, for instance?
A. Mr. Johnnie Quinn, from Atlanta, used to come Mac's Fishing Camp, drive right through.

Mr. Hartridge:
Your witness.

Cross Examination.

By Mr. Smith:
Q. Is this your testimony, that much traffic came on the road at Eastport?
A. Well, I wouldn't say much, no, sir.
Q. As a matter of fact, they finally quit keeping the toll gate for lack of traffic, didn't they?
A. Some came on there.
Q. A few, a very few, is that right?
A. No, I couldn't say a very few, because I saw—I taken in 17—31 one Sunday.
Q. One Sunday?
A. Yes, sir.
Q. When was that?
A. I don't recall the date.
Q. The Eastport, you kept the Eastport toll gate?
A. Yes, sir.
Q. Is that the only one that you kept?
A. No. That was after November of 1938, you are speaking of now?
Q. After October of 1938.
A. Yes, sir.

Q. Well, after October of 1938, do you know anything about traffic coming into the road at Eastport?

A. I couldn't say how many there was, but some.

Q. It constantly dropped off until the toll gate was closed, isn't that so?

A. Yes, but that doesn't mean that didn't no traffic come in there, because it did.

Q. Do I understand you to say that one out of every two cars paying toll over the road in the winter had a foreign license on it?

A. I would say about one out of every three yes, sir. But not two, though.

Q. You confine that to cars paying toll over the road?

A. Yes, sir.

Q. And how do you tell when a car pays toll over a road?

A. When I am toll collector?

Q. Yes.

A. Well, he comes and buys a ticket and pays.

Q. Then are you talking only about the cars that bought tickets from you?

A. Yes, but I know there were others that bought tickets from the others on the Eastport road.

Q. It is your testimony then that one out of every two cars, that came on the road at Eastport had a foreign license, one out of every two that went over the road had a foreign license?

Mr. Boggs:

He has told you it was one out of three.

A. I think that one out of three applies better.

Q. I understood you to say one out of three in the summer time, and in the winter more than one out of three.

A. Yes, it would beat that in the winter time.

Q. You wouldn't say one out of two?

A. No, sir, about two and one half.

Q. Now, taking that ratio of cars, do you mean that they are the cars that came on the road at Eastport, or that proportion applied to all cars coming over the road that had tickets?

A. No, I don't say that.

Q. Which of the two do you say?

A. What was that again?

Mr. Smith:

Read it.

. . . Whereupon the question was read.

A. It applies to cars coming over the whole road.

Q. Did anyone ever tell you not to keep a record of foreign cars?

A. No.

Q. Do you mean for the Court to understand that without any instructions you simply failed to put foreign cars on your report day by day?

A. I did not fail to put them on there. I failed to count them and give the correct number.

Q. As a matter of fact, you hardly showed any foreign cars on your reports, did you?

A. Yes, I showed considerable.

Q. How many did you show in ratio?

A. Well, I have already told you about thirty per cent.

Q. Is that what you showed on your report?

A. Twenty-five or thirty-five, I think, something like that.

* * * * * * * * *

Q. Mr. Nolan, as I remember your testimony before lunch it was that the summer or the winter had the most cars with foreign licenses?

A. The winter time.

Q. The winter time?

A. Yes, sir.

Q. Would December be one of the good winter months?

A. Well, it depends on whether that club was open in December or not.

Q. You think it depends entirely on those clubs?

A. Not entirely, no, sir, but partially.

Q. Do you have any idea of any large number of foreign license cars going to the clubs on Fort George?

A. Well, I know they went there.

Q. About how many in a season?

A. One season?

Q. Yes, sir. You wouldn't know the exact number, would you?

A. No, sir.

Q. Would it go by the tens or twenties or fifties or hundreds or what?

A. Well, let's see. 250, I would say.

Q. 250 foreign license cars go to the clubs on Ft. George in a season. I hand you a report, which you appear to have made for December 30, 1938, Mr. Nolan. Is that a report that you made in the ordinary course of business?

A. No, that is not my report, and not my signature there.

Q. That is not your report and not your signature?

A. No, sir, that is not my signature.

Q. Whose handwriting is that? Do you know?

A. I don't know. It definitely is not mine.

Q. Examine these reports attached to this report for December, and start at the bottom and come up. Is there a report there from you on December 1st? Is that your report for December 1st, 1938?

A. Yes, that is my signature.

Q. Now, just turn through there, please, sir. On December 1st, you report 13 cars with no foreign licenses, did you not, in 1938?

A. Yes.

Q. And three of those cars were under either miscellaneous or party?

A. Yes.

Q. Now, check me on this, please, sir. On December 2, 1938, does your report show 21 cars, one foreign license, and three miscellaneous or party?

Mr. Boggs:

Can you see plainly, Mr. Nolan?

A. No, sir, I can not.

Mr. Smith:

Your Honor, we might save time if I were to give this witness this tabulation and excuse him from the stand and let him check it and recall him later, after he has had an opportunity to check it.

Mr. Boggs:

I wish you would.

The Court:

All right. You may do that.

Mr. Smith:

I want you to take this tabulation and check through it, and wherever you see an error note it, so you can testify.

The Court:

And we will recall you to the witness stand. Do it right away.

(Witness temporarily excused.)

266 MR. N. W. SMITH, was thereupon produced as a witness on behalf of the Plaintiffs herein, and having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Boggs:

Q. State your name and place of residence, Mr. Smith?

A. N. W. Smith. Green Cove Springs, Florida.

Q. Were you at one time employed by the defendant in this case, North Shore Corporation?

A. Yes, sir.

Q. What was the first job you had with them?

A. Toll collector.

Q. At what toll gate?

A. No. 2.

Q. Toll Gate No. 2. And what was the next job you had with them?

A. That is the only one I ever had with them.

Q. Didn't you work at Eastport for a while?

A. Yes, alternated there.

Q. Wasn't that before toll gate No. 2?

A. Yes, I think I did work a little bit at No. 2—at Eastport a little bit, but I won't say, I am not sure about that. Them days are far back.

Q. When did you first go to work for the company?

A. Oh, I don't know. I worked back in 1936, I think.

Q. About 1936?

A. Somewhere, I think it was, I am not sure.

Q. 1936?

A. Yes, sir, somewhere along there, 1936, I believe. I am not sure, as it has been so long, I forget.

Q. Well, you were working for the company with the —when the Fair Labor Standards Act went into effect on October 24, 1938, weren't you?

A. Yes, sir.

Q. And you worked continuously with them until about what time?

A. The 29th of September, I think it was.

Q. Of what year?

A. Of 1942. The 28th or 29th.

Q. Mr. Smith, I hand you Exhibit F to the defendant's answer in this case, which purports to deal with your pay and with the hours of your employment, and if you will start with the date October 15, 1938, and I ask you to examine that schedule and see if you can tell me how long you worked at Eastport?

A. According to this schedule, it must have been about the 6/15/1940.

Q. And you were at Eastport all of that time?

A. No, above that, prior.

Q. In other words, everything up to that time?

A. Yes, sir.

Q. Now, your hours at Eastport, were you day man or night man?

A. I was night man at No. 2.

Q. Now, I am talking about Eastport now.

A. I was going to get to that.

Q. All right. I was night man at No. 2 toll house, me and my son were working that toll house together between us. I was the night man and he was the day man. Well, on Saturday evenings, Sundays and holidays, we was instructed to go to Eastport on Saturday afternoon and work from 12 o'clock until such a time as the traffic fell off, until we could be relieved, we could come back there, and then one of us went to Eastport, me or my son, it didn't make any difference which one, went up there and would stay until such time, say five o'clock, or six o'clock or seven o'clock, and come back, or we either would come back to No. 2 toll house, back there, and I would go home, if I was the man that came there, and stayed until twelve o'clock Saturday night, and then I would go back

to work until such time as the man would come from Eastport, or even if it was me, then I would go home and stay until twelve o'clock and come back and stay the rest of the night.

* * * * * * * * *

Mr. Boggs:

Q. Do you remember in these daily reports a blank to be filled in that was—where might be recorded the number of foreign licenses that went through?

A. Yes, sir.

Q. Did you have any instructions about filling that in?

A. Not to my knowledge, I didn't. It seems to me like someone told me it wasn't necessary to keep that down.

Q. Did you not help to keep an accurate record there, by estimating or otherwise, of the foreign cars that passed by your toll house?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

The Court:

Was each of these figures just an estimate?

The Witness:

If I ever put down a foreign car, I don't remember it. They said it wasn't—somebody told me it wasn't necessary to put them down, and so we never—I don't know for sure that I ever entered one or not. I might have.

Mr. Boggs:

Q. I hand you Plaintiffs' Exhibit No. 2, attached to which are certain reports from individual toll keepers. Is that the general form of daily report that you made? I don't mean that particular report, but is that the form of report you made?

A. Yes, sir, that is the form of report.

Q. And it has reference to a column in that daily report reading, "Foreign", that you say that you did not keep any tally of?

A. No, I did not keep no tally on foreign cars. As I say, I might have put down some down there, but it was just at random.

Q. Did you see some dredges working from time to time now down near Sisters' Creek, or down near the mouth of the river?

A. Yes, sir.

Q. Did you ever see any dredge machinery parts being hauled down in that direction over that road?

A. Oh, yes, plenty of it.

Q. Did you notice where any of those cars that hauled them came from?

A. No, sir, I did not.

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273 MR. MILTON E. NOWLIN, having been heretofore produced and first duly sworn as a witness on behalf of the plaintiffs herein, was recalled to the witness stand, and further testified as follows:

Further Cross Examination.

By Mr. Smith:

Q. Since you were excused, Mr. Nowlin, have you compared the tabulation I made with the reports of your own, which was for the month of December, 1938?

A. Yes, sir.

Q. What errors did you find in that tabulation, if any?

A. I don't find any.

Q. You do not find any?

A. No.

Q. Do you find this tabulation, do you, to be correct?

A. Yes, sir.

The Court:
Would you like to read the tabulation into the record?

Mr. Smith:
If I may, sir.

The Court:
All right.

* * * * * * * * *

Mr. Smith:
It has four columns. The first column will be the dates, which in case will be a date in December, 1938. The second column will be the total number of cars shown. The third column will be the foreign cars shown. The fourth column is the total of cars shown under the heading miscellaneous and party, excluding the time or dates from the 19th of December on, which have not been calculated for the fourth column. They are as follows:

December 1st, 13 cars, no foreign, three miscellaneous and party.
December 2nd, 21, one, and three.
December 3rd, marked on this in the witness' own hand, "Didn't work". That is your handwriting opposite December 3rd, isn't it?

The Witness:
Yes, sir, that was my night off.

Mr. Smith:
December 4th, 48, 3, five.
December 5th, 26, 2, 8.
December 6th, 12, none, four.
December 7th, 19, 2, 3.

December 8th, 20, 1, 4.
December 9, 18, 2, 4.
December 10th, blank.
December 11th, marked by the witness, "Didn't work".
Look at that, Mr. Nolan. You mean that "Didn't work" to be by the 10th, didn't you, instead of the 11th?
A. Yes, it must have.

Mr. Smith:
December 11th, 33, 4, 5.
December 12th, 22, 1, 5.
December 13th, 19, none, four.
December 14th, 29, 2, 4.
December 15th, 23, 3, 4.
December 16th, 12, 1, 3.
December 17th. That was another day you did not work, wasn't it?
A. Yes, I believe it is.

Mr. Smith:
December 18th, 30, 2, 5.
December 19th—and here, Mr. Reporter, I drop off the fourth column.
December 19th, 24, 1.
December 20th, 8, none.
December 21st, 17, none.
December 22nd, 15, 3.
December 23rd, 20, 1.
December 24th, that was another day you did not work, wasn't it?
A. That is right.

Mr. Smith:
The 25th, 28, three.
The 26th, 53, five.
The 27th, 16, one.

The 28th, 19, one.
The 29th, 29, two.
The 30th, 17, one.

Q. Now, Mr. Nolan, I understand you to testify a while ago that you worked seven days a week?
A. No, sir, six nights a week.
Q. Six nights a week?
A. Yes, sir.
Q. Now, what is your explanation for your showing the number of foreign cars shown here in the month of December, when you have testified in Court that the correction ratio was one to three and one to two and one-half?
A. Well, it was so unimportant that I did not take any care of it.
Q. You were not told not to take care of it, were you?
A. Were told not to?
Q. Were you told anything about it one way or the other?
A. I don't remember anything of it, no.

Mr. Smith:
All right, sir. That is all with you.

Mr. Boggs:
No more questions.

The Court:
You may be excused.

(Witness excused.)

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277 MR. J. F. BOOTH, having been heretofore produced and first duly sworn as a witness on behalf of the Plaintiffs herein, was recalled to the witness stand, and testified further as follows:

Further Direct Examination.

By Mr. Hartridge:

Q. Mr. Booth, are there any roads on Fort George Island?

A. Yes, sir.

Q. About how many miles of hard surfaced roads are on that Island?

A. Well, the road is not hard-surfaced. It is a shell road. It is a county road, though.

Q. How long is it?

A. Well, it goes down one side of the Island, and comes back up the other, makes a loop, I don't know exactly, but I judge about seven miles, seven or eight.

Q. Do you know whether it is a county road or a part of the Heckscher Boulevard?

A. It is a county road.

Q. It connects with the Heckscher Boulevard on the far end, by the ocean?

A. Yes, sir.

Mr. Smith:

Mr. Hartridge, I think we can stipulate on that better than the witness, because he has not given it right. That road connects with Heckscher Road at Pilottown, and the loop is about five and one-half miles around, and it is a county road, and a portion of Heckscher Drive, about three-eighths of a mile in length, from where the road enters Pilottown to where the shell road goes up to Ft. George Island is constructed over an original shell base that was at the time of the construction a public road, and

still is and always has been, there being a resolution of the County Commissioners on record permitting the Heckscher people to maintain the drive over that three-eighths of a mile stretch.

Mr. Hartridge:
I accept the correction as made by that statement.

* * * * * * * * *

(Witness excused.)

The Court:
Are those the plaintiffs' cases?

Mr. Boggs:
Yes, sir.

The Court:
The plaintiffs rest?

Mr. Boggs:
Yes, sir.

* * * * * * * * *

. . . Whereupon a short recess was taken, after which the proceedings were resumed as follows:

The Court:
Proceed. Are you ready?

Mr. Smith:
Yes, sir.

The Court:
Proceed.

Defense:

Mr. Smith:

We request the Court to take judicial notice of the United States Census figures on populations by precincts in Duval County as follows:

The census pamphlet which I have here in Court today shows the population of precinct 37, Fort George, to be 98. It shows the population of Precinct 38, New Berlin, to be 584. Also, that the 1930 census shows the following population of Precinct 36, Eastport, 172; 37, Fort George, 76; 38, New Berlin, 228.

The Court:

Yes, the Court will take judicial notice of it.

280 CAPTAIN N. B. KEMP, having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name, please, sir?

A. N. B. Kemp.

Q. Where do you live, Captain?

A. New Berlin.

Q. That is a mile and a half south of Toll House No. 2 on Heckscher Drive?

A. Yes, sir.

Q. New Berlin is quite an old settlement, is it not?

A. That is right.

Q. How long have you lived there, Captain?

A. At least thirty years.

Q. You lived there, then, a long time before Heckscher Drive was even built, didn't you?

A. That is right.

Q. What is your business?

A. In the Coast Guard, sir.

Q. Do you also have an interest in a store at New Berlin?

A. Mrs. Kemp runs the store a part of the time.

Q. How long has the store been in your family?

A. I would say twenty-five or thirty years.

Q. You are familiar with the business which it does?

A. Yes, sir.

Q. State from what source you get the goods that you sell at the store?

A. Well, the trucks from Jacksonville delivers the cold drinks, and we deliver our other goods.

Q. Now, prior to the outbreak of war, was that same arrangement in effect?

A. Yes, sir.

Q. Do you buy any goods from up in the State of Georgia, or from any other state out of the state of Florida?

A. No, sir.

Q. How often during the period from October, 1938, to the present time, have you traveled Heckscher Drive?

A. Well, about, I would say, two or three times a week.

Q. You have had occasion then to observe the licenses of the cars that have been traveling the drive, have you not?

A. Yes, sir.

Q. Are you able to make any observation as to the relative proportion of cars with foreign licenses to those with Florida licenses?

A. I would say about five per cent foreign licenses.

Q. Are there any places of business that are operating down that road now, or that have been operating there

since October of 1938, other than the following: Your store at New Berlin; Mr. Matthews' store at the intersection of the Fort Road; and the Brown, Clapboard and Sisters' Creek fishing camps, the White Shell camp, Mrs. Chapman's store, and Overall's camp, are there any others?

A. That is all I know of.

Q. Are there any industries at all located down that road?

A. No, sir.

Q. Since October of 1938, to your knowledge, has there been any commercial fishing down the road?

A. Not that I know of.

Q. Captain, do you have any idea as to who does most of the fishing down Heckscher Drive, as to whether they would be out of state people or local people?

A. No, sir, I don't think there is, only a few there, and just some shrimp, or like of that.

Q. No, sir, I don't mean that. You are thinking about the darkies who used to throw nets around Dames Point.

A. That is right.

Q. I am talking about the sportsmen who go on fishing trips. Do you have any way of telling whether they are local people or out of state people?

A. What comes in my place are just local people.

Q. That is all you know about?

A. Yes, sir.

Q. And what is the population of Dames Point, New Berlin and the settlement at the south tip of the point, Captain?

A. Well, maybe 150 people.

Mr. Smith:

Your witness.

Cross Examination.

By Mr. Boggs:

Q. Captain, aren't there two roads that a person could travel going into Jacksonville from New Berlin?

A. Yes, sir.

Q. One of them goes right up to the Heckscher Drive, and then turns left and into State Road 17, that is one route, isn't it?

A. It is the road that crosses the Heckscher Drive, goes out to ocean way.

Q. And there was one way to go from Jacksonville to New Berlin, was to turn left on Heckscher Drive when you get to the intersection?

A. That is right.

Q. That is one road. What is the other road, the other route?

A. Go right straight out to Ocean Way, at Main Street.

Q. Yes, sir. Which are the—which is the shorter of those two routes?

A. Heckscher Drive.

Q. About how much shorter, if you know?

A. I would say it was about eight or nine miles.

Q. Eight or nine miles. How far is it by the shortest route from New Berlin to Jacksonville?

A. Well, I would say from my store at New Berlin, it would be about eleven miles to 8th and Main Streets.

Q. To Eighth and Main?

A. Yes, sir.

Q. You say it would be eight or nine miles farther around by Ocean Way?

A. Yes, sir.

Mr. Boggs:

That is all.

Mr. Smith:

That is all, Captain. You can be excused.

(Witness excused.)

284 MR. CHARLES MATTHEWS, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. State your name, please, sir.

A. Matthews, Charles Matthews.

Q. Where do you live, Mr. Matthews?

A. Eastport.

Q. How long have you lived at Eastport?

A. I have been there a little over nine years, about nine and one-half years.

Q. You have lived there since Heckscher Drive was built, have you not?

A. Yes, sir.

Q. What is your business, sir?

A. Groceries and gasoline and oil.

Q. And where is your place of business located?

A. It is right at the intersection of the county road and Heckscher Drive.

Q. At what place?

A. At Eastport.

Q. And you have been in business there how long?

A. Well, it was nine years the 7th day of last November.

Q. The whole time that you have lived at Eastport?

A. I have been there that time.

Q. Where do you get the merchandise which you sell at your store?

A. I get it through jobbers here in Jacksonville.

Q. Did you buy any of it from out of the State of Florida?

A. No, sir.

Q. Have you had occasion to notice the licenses on cars going over Heckscher Drive to such an extent that you could give the Court any estimate as to how many of them bore foreign licenses?

A. No, sir, I could not give no estimate of it, but I notice we have them right along, but not as much now as we did a few years back.

Q. You could not estimate a percentage of them at all?

A. No, I would not give no percentage, because I never kept no record of it.

Q. Do you happen to know of any movement of traffic over that road or movement of goods to people from points in Georgia or in any other state other than Florida to points on Heckscher Drive or on Ft. George Island?

A. Well, not no more than I have seen them come in there and going down the road and stopping—

Q. Have you any way of telling?

A. Stopping, inquiring about different things down the road, would be about the only thing I would know of that.

Q. And that would be the only thing to indicate, so far as you know, any traffic from out of the State of Florida, going down Heckscher Drive?

A. Yes, sir, that is about what I know about it.

Q. You personally don't know of any such traffic, do you?

A. No, sir.

Q. Heckscher Drive would be the shortest route from Eastport into Jacksonville, would it not, Mr. Matthews?

A. Yes, from Eastport it is.

Q. Is there another road into Jacksonville from Eastport?

A. Yes, sir.

Q. How long is it?

A. Well, it is about three and one half miles farther to Jacksonville, to go the other road, than it would be the Heckscher Drive.

Q. That route is a county road?

A. A county road, yes, sir.

Q. Do you happen to have any way of telling whether most of the Eastport traffic goes over the county road, or over the Heckscher Drive?

A. No, I couldn't make no statement on that. I wouldn't know.

Q. About what is the population of Eastport?

A. That would be hard for me to say again. There is, I think, about 52 houses, there, and they are all full, and I guess they run anywhere from four or five, either four or five or six to the family, something like that.

Q. Would that situation be the same prior to the outbreak of war?

A. Be what?

Q. Would it be the same population prior to the outbreak of war?

A. What do you mean?

Q. Were those houses full before war broke out?

A. Well, there was usually some of them empty along at times. There have been some empty. They stayed pretty well filled up for quite a while.

Q. Do you know of any industries other than grocery stores and fishing camps and the two clubs on Fort George Island down Heckscher Drive?

A. No, I guess that would cover it. I don't know of any.

Q. Your customers at your store, Mr. Matthews, are they local people, or out of state people?

A. Well, the majority of them are local. Of course, we have cars, we have sold gas and drinks and such things as that to out of state cars that would stop in there.

Q. Can you give the Court any idea of what percentage —of the percentage of that business as compared to the rest of your business?

A. No, sir, I could not.

Q. Would it be small or large ?

A. I just could not make no statement on it, so I never kept any record on it, and it would be simply impossible for me to say.

Mr. Smith:

Your witness.

Cross Examination.

By Mr. Hartridge:

Q. Mr. Matthews, how is your gasoline delivered? Over the Heckscher Drive or over the county road?

A. No, that, as a usual thing, comes the county road to my place.

Q. The gasoline?

A. Yes, sir.

Q. Do you know where it comes from?

A. From Jacksonville here, the Texas Oil Company delivers it to me.

Q. Are there any other gas filling stations on that road that you know of?

A. None, other than m place on the Heckscher Drive down there at New Berlin.

Q. Heckscher Drive has some gasoline stations?

A. I think so, yes.

Q. Do you know whether the trucks that supply them come over the county road or over Heckscher Drive?

A. No, it usually comes Heckscher Drive.

Q. You have seen it coming on Heckscher Drive?
A. Yes, sir, it goes that way.
Q. Do you know what kind of gasoline it is?
A. It is Gulf, I think it is.

Mr. Hartridge:
That is all.

Mr. Smith:
That is all.

(Witness excused.)

289 MRS. MARGARET B. PENDER, having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Your name is Margaret B. Pender?
A. Yes, sir.
Q. Where do you live?
A. 5623 Liberty Boulevard.
Q. Jacksonville, Florida?
A. Yes, sir.
Q. How long have you lived in Jacksonville, Duval County, Florida?
A. Well, I was born and raised here.
Q. At any time in the past, have you and your husband conducted a fishing camp on Heckscher Drive?
A. Yes, sir, for the past eleven years. We went there in 1932, and left April 22nd.
Q. Of what year?
A. Of 1943.

Q. Did you own that camp or did you rent it?

A. We rented it.

Q. From what company?

A. The Bayshore Company.

Q. Later known as North Shore Corporation.

A. Yes, sir.

Q. Where exactly, where was the camp located?

A. Right at Clapboard Creek.

Q. At Clapboard Creek and the Heckscher Drive?

A. Yes, sir.

Q. Will you tell the Court, please, ma'am, what other stores and fishing camps there are on Heckscher Drive?

A. Well, I guess that one at Eastport is the first store, isn't it?

Q. Mr. Matthews' store?

A. Mr. Matthews' store at Eastport, and then there was a camp at Brown's Creek, and one at White Shell and Sisters' Creek, and Rainbow Camp at the end.

Q. Now, is there a store at Pilottown?

A. Yes, sir.

Q. What is the name of that?

A. Mrs. Kemp—No, that is New Berlin. Mrs.—I know the lady. She was sitting out there with me, but I can not think of her name.

Q. Mrs. Chapman, isn't it?

A. Yes, sir, Mrs. Chapman at Pilottown.

Q. In that area which this road serves there are other stores and camps besides those you have mentioned, are there not?

A. What others?

Q. Stores and camps?

A. Serve the road?

Q. In that area that the road goes goes into, are there any other stores or camps?

A. No, sir, not that I remember of.

Q. Are there any factories or industrial establishments of any kind?

A. No, sir, just a little post office down there, that is all.

Q. At what place?

A. At Pilottown.

Q. That is the post office—

A. Fort George, Florida, they call it.

Q. That is served by the mail carrier that runs out of Jacksonville?

A. Yes, sir.

Q. Was there at one time a camp out on the North Jetty?

A. Yes, sir.

Q. Do you think of any other camp or stores down this road at any time since 1938, besides those that have now been mentioned?

A. No, I don't. There was some of them have been put there since we went there, but I don't know of any that —others.

Q. Are there any others that you can recall that have been there since 1938 that we have not named, is my question?

A. No, I don't think so.

Q. Now, during the years that you operated your camp, did you sell anything to the public?

A. Such as drinks, and did sell sandwiches for a long while, and bait and rented boats and things like that.

Q. Now, the things that you sold or furnished to the public, at your camp, where did you get those goods?

A. They were delivered from people right here in Jacksonville, around from the drink people and candy factories, and places like that.

Q. Did you ever have anything brought into your place from outside of the state of Florida for use at your store?

A. No, sir, nothing.

Q. Was anything ever brought to you for use at the camp?

A. No, sir.

Q. During the years that you have operated the camp, particularly from October, 1938 until April of this year, did you have occasion to notice the licenses on cars?

A. Why, yes, sir.

Q. Did you notice them?

A. I was right there all the while.

Q. Do you have any recollection of the approximate proportion of foreign licenses to local licenses on the cars that used the Heckscher Drive?

A. Well, the people that were staying there at our camp, I wouldn't say there would be one out of every fifteen or twenty that would be out of the state.

Q. Now, such people as did come to your camp, do you know of any of them who came there on trips from outside of the state of the state of Florida?

A. No, nothing except my relatives, and they did not come more than once in the summer.

Q. Once?

A. In the summer.

Q. In one summer?

A. Yes, sir.

Q. Well, would they come any during the rest of the year?

A. No, sir. I just have a few relatives in Georgia, and they would come down and stay a day or two and fish and stay with me, and go back.

Q. You had no fishermen other than these relatives who came from outside of the state?

A. Yes, sir, we had a good many came, but they came to Jacksonville to visit relatives, and things, and then came out there. They did not come direct to the camp.

Q. Was there a telephone at your camp, Mrs. Pender?

A. Yes, sir.

Q. Can you tell the Court how much, if any, that telephone was used in the handling of long distance phone calls going outside of the state of Florida?

A. Not over two or three times. The dredge people used it.

Q. Two or three times over what period of time?

A. The whole time I had it, from the time it was first put in, they put me in a phone. I think it must have been about four or five years. I am not sure about how long.

Mr. Smith:
Your witness.

Mr. Boggs:
No questions.

The Court:
You are excused.

(Witness excused.)

295 MRS. BLANCHE W. PRIDE, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. State your name, please.
A. Blanche W. Pride.
Q. Where do you live?
A. Hamilton and Iroquois, in Ortega Terrace.
Q. That is in Jacksonville, Duval County, Florida?
A. Yes, sir.
Q. How long have you lived in this county?
A. About forty years.

Q. What is your business, Mrs. Pride?

A. I am office manager for the Jacksonville Tourist and Convention Bureau.

Q. And how long have you held that office, that position?

A. Since November 15, 1936.

Q. State whether the Tourist and Convention Bureau has any arrangement with the owners and operators of Heckscher Drive for the issuance of cut-rate passes for the use of the Drive?

A. They did. We were instructed to countersign a card that they issued us, and that would reduce the toll twenty-five cents on each trip.

Q. And were these cards issued from time to time?

A. Yes.

Q. To what class of persons?

A. People from out of the state that were visiting Jacksonville, for sight-seeing purposes.

Q. Did you issue any of those cards to local residents?

A. No.

Q. Now, will you inform the Court, please, ma'am, as to how many of those cards you issued? Do you have any record on that subject?

A. No, I don't. They were not in excess of 100 a year, if that many.

Q. For each year from 1936, on down to date?

A. We haven't issued any in a year and a half.

Q. Besides that time, it was not in excess of 100 a year?

A. No.

Q. What is the pamphlet which I now hand you, Mrs. Pride?

A. This is the booklet issued by the City Advertising Committee of the City of Jacksonville, and which we distributed, which is designed as an aid to visitors to Jacksonville in finding their way around. It was primarily

designed for motorists, but of course we are using it at present, and just putting bus routes on it.

Q. Was that furnished to tourists who came to Jacksonville interested in trips around the city?

A. Yes, sir.

Q. Can you identify the document all ready in evidence in this case as Plaintiffs' Exhibit No. 3?

A. We had a similar one, but this must be a later edition, because we did not have the one with the fishermen's rule on it.

Q. Did the Bureau likewise distribute these things to the visitors to the City?

A. Occasionally. We did not have very many of them.

Mr. Smith:

The pamphlet, which has already been examined by counsel, is offered in evidence.

The Court:

Let it be received in evidence.

Mr. Smith:

If Your Honor is interested, you will note from that it describes eight possible trips for the tourists around the city, and one of them is labeled Trip No. 3, and is a trip down Heckscher Drive and return, and with a description of the drive and such attractions as it has.

The Court:

All right. Let me see it.

. . . The instrument last above referred to was received and filed in evidence and marked as Defendant's Exhibit No. 1.

The Court:

Are you through with the witness?

Mr. Smith:
I believe I am, sir. Your witness.

Mr. Boggs:
No questions.

The Court:
You are excused.

(Witness excused.)

298 MR. A. P. SHIELD, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name, please, sir?

A. A. P. Shield.

Q. Where do you live, Mr. Shield?

A. Brown's Creek.

Q. Do you have anything to do with the Brown Creek Fishing Camp?

A. Yes, sir. I am manager of the Camp.

Q. Where is that located?

A. Right on the St. Johns' River, and Martha Brown's Creek, the St. Johns River, on the Heckscher Drive, going out of Jacksonville here.

Q. How long have you been at the Brown's Creek Camp?

A. I came here, I took charge of that the 15th of November, last year.

Q. 1942. Prior to that time, where were you?

A. I was at the North Jetties, leasing from the same company, on the end of the line, right at the ocean, the North Jetties Fish Camp. I was there for two years.

Q. At the North Jetties Camp, were there any facilities for housing people who might want to stay at the camp?

A. Nothing except the owner, that they had one house that they kept for their own use.

Q. And where did the owners live?

A. In Jacksonville, here. I was manager of the camp, you see, that is all.

Q. At Brown's Creek, are there any facilities for guests to stay?

A. No, sir, only except the owner's home. They have a three-room cottage there they have for week-ends, and whenever they get off to go down there.

Q. At either place, have you ever rented any parking space or living quarters to anyone who has come in from out of the state of Florida?

A. No, sir, never have.

Q. Mr. Shield, did you ever particularly notice the licenses on cars that came to your camp, as to which were foreign and which were Florida licenses?

A. Nothing particularly, because I had no cause to ever think of such as that. I didn't know anything like that would come up about me.

Q. Are you in a position to give the Court an estimate as to a comparison between the Florida cars and foreign cars that used Heckscher Drive?

A. Since I have been thinking about it, when I was at the Jetties, we had good business spring, summer and fall. Of course, winters were dull. There was a bunch of cars went there, and I would figure five or six per cent, just an estimate, not that I ever checked, would clear the foreign licenses that were there.

Q. What about at Brown Creek? Was there any difference?

A. You see, I came there in November, and it was only—when did that ban start? I wasn't there over twenty days when that ban came and they didn't even allow them

to even park there to fish, and that lasted two months, didn't it?

Q. I don't know, sir. You will have to tell it.

A. There wasn't nothing there. I went to digging in the ground and raising a garden and raising chickens. I have a bunch of chickens now. But since then, and before then, what little time I was at Brown's Creek, I think that would cover every bit that I could make an estimate on, because I had no cause to check.

Q. Now, the telephone line owned by the Bayshore Water & Light Company never came down to your North Jetties camp, did it?

A. No, sir, I had no phone.

Q. Do you have a telephone at Brown's Creek?

A. Yes, sir.

Q. Inform the Court about how many calls that you had over that line, as near as you can come to it, that went outside of the State of Florida, by long distance?

A. I haven't had the first one.

Mr. Smith:
Your witness.

Mr. Boggs:
No questions.

(Witness excused.)

301 MR. DAVID A. WITHROW, having been produced and first duly sworn as a witness on behalf of the defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. State your name, please, sir?

A. David A. Withrow.

Q. Where do you live?

A. 1853 Hubbard Street.

Q. Are you in business at the present time?

A. I am a maintenance contractor.

Q. Are you much of a fisherman, Mr. Withrow?

A. All I can.

Q. Did you ever fish down Heckscher Drive?

A. Oh, yes.

Q. About how often do you go down there, sir?

A. Well, recently, I have been having some business in that neighborhood, and I have been going down there almost every day.

Q. For how long a period has that been, sir?

A. For possibly two or three hours a day.

Q. For how long a period of time have you been going down?

A. For the last nine months.

Q. Prior to that time, did you ever go down Heckscher Drive to fish?

A. Oh, yes, for the past eight years.

Q. About how frequently prior to that time had you had business in that neighborhood?

A. Once a week.

Q. Mr. Withrow, did you ever have anything to do with automotive traffic in any official capacity of any kind?

A. I was with the Highway Department of Colorado for two years.

Q. About how long ago, sir?

A. Oh, I would say eight years ago, maybe ten years ago, something like that.

Q. What were your duties with the Department?

A. Checking traffic.

Q. Checking traffic?

A. For the Highway Department.

Q. Has that got you in the habit of noticing traffic more than you would otherwise?

A. Oh, yes, just notice a car as it goes by.

Q. You never made any traffic check on Heckscher Drive, did you?

A. No, I did not attempt to.

Q. Did you ever have any occasion to attempt it?

A. No. Nobody has ever made an inquiry about that, pertaining to it.

Q. At the same time, you have had occasion to observe that traffic?

A. Oh, yes, I noticed it as it goes by there.

Q. Can you estimate for the Court the approximate ratio of cars bearing out of state licenses to Florida cars that use that road?

Mr. Boggs:

What period?

Mr. Smith:

Q. During the period from 1938 to date?

A. Well, I could not guess at that lately. My impression of that lately is that there are a number of foreign cars in this state, that are working here in this locality, but from my experience, I would consider those local cars. For instance, a Georgia car with a Naval Base license on it, a Naval Base indicator plate, I would merely classify that as a local car. I noticed several of those. I noticed several Army cars, and I noticed several U. S. Government cars, and such things as those, but in my experience as a car checker, I would not classify that as a foreign car.

Q. You have not made any conscientious effort to differentiate between classes of cars, have you?

A. No, sir. I would consider a foreign car any car that I would classify as a tourist, and in my estimation that would not run over four or five per cent, because it has been very low owing to the conditions that we have.

Q. Four or five per cent compared to the total traffic on that road?

A. That is just my guess at it, of course. I haven't made any careful check of it.

Q. Have you ever seen any traffic down there that you could positively identify as traffic traveling between states?

A. I paid no attention to that. I wouldn't notice it. It wasn't strong enough to call my attention to it, you know what I mean, and I didn't make any mental note or anything like that.

Q. Did you ever see any transport trucks down there, for instance?

A. I don't remember that I did, other than the army trucks.

Q. Tell the Court, if you will, please, sir, such business places as you know about that operate down Heckscher Drive?

A. Such business places?

Q. Yes, sir.

A. Well, the breweries send trucks down there, which is local, and the soda water company sends trucks down there, which is local. Once in a while an ice truck goes down there, and the candy trucks, and crackers, and such as that, the confectioners.

Q. Do you know of any factories or industries that are situated down Heckscher Drive?

A. None that I know of.

Q. Do you know of any commercial enterprises other than stores and fishing camps that operate there?

A. No, not to my knowledge.

Q. Do you know of any commercial fishing down there?

A. Not to my knowledge, no.

Mr. Smith:

Your witness.

Mr. Boggs:
No questions.

Mr. Hartridge:
Just a minute.

Cross Examination.

By Mr. Hartridge:

Q. You say due to conditions it would not run over four or five per cent. In your opinion, did it run higher prior to Pearl Harbor and the gas rationing and tire rationing, the percentage of foreign cars?

A. Well, I never made a distinction of that, because when our gas rationing went in, all cars stopped. The traffic was much heavier before that. But, of course, when they stopped the local cars, they stopped foreign cars also, what you call out of state cars. I call them foreign cars. That is what I mean by foreign cars.

Q. These Coast Guard licenses have made it a little hard for fishermen living away from the coast, haven't they?

A. Oh, yes, sir. Yes, indeed.

Q. You have met fishermen when you were on the road that came down from Georgia and spent the day fishing, haven't you?

A. Well, I haven't noticed any particular fishermen that came down. Once in a while a tourist would come from Alabama or Georgia, but that was very seldom, might be on Sunday or a holiday or something.

Q. You haven't met any people down there, fishermen from Georgia or some other place, when you would be talking around?

A. Oh, yes, I met a man from Georgia once in a while, and a man from Alabama once in a while, but it was seldom.

Q. You think it was about five per cent or six per cent?

A. Well, that is just an estimation of mine, because I did not make a careful check. It was just a little—you might, say from force of habit.

Mr. Hartridge:
That is all, sir.

Mr. Smith:
Thank you, sir.

(Witness excused.)

306 MRS. BERTHA SMITH, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. Is your name Bertha M. Smith?

A. Yes, sir.

Q. Where do you live?

A. Clapboard Creek Fishing Camp on Heckscher Drive.

Q. Do you and your husband and another couple there occupy that camp?

A. Yes, sir.

Q. How long have you been operating it?

A. A little over two months.

Q. That camp is at Clapboard Creek where it enters the St. Johns River, and where Heckscher Drive crosses there, is it not?

A. Yes, sir.

Q. Did you engage in any business—do you engage in any business there other than renting boats and selling bait?

A. No, sir.

Q. Do you sell any form of merchandise?

A. Only soft drinks and candy and things like that.

Q. Where do you get that merchandise and soft drinks and candy?

A. Well, we get all of it, all of it comes out of Jacksonville, some on trucks, and some we come into town and get ourselves.

Q. Have you ever had any merchandise delivered to you from out of the state of Florida?

A. No, sir.

Q. During the two months that you have been at the Camp have you observed the cars that come down and the licenses on them have you not?

A. Well, I haven't paid close attention, because I did not have any reason to.

Q. Are you able to give the Court any estimate as to the percentage of cars which came down Heckscher Drive which bore foreign licenses?

A. Well, would that include service men?

Q. Yes, include them all. Have you any way of differentiating between cars which are moving between towns outside of the state of Florida and around on Heckscher Drive as distinguished from cars just bearing Florida licenses?

A. No, I have not.

Q. You give the information any way you can give it.

A. Well, I don't know of anyone that has come from any other state direct down that drive to fish. The only people like that have been people that have visited relatives or something in Jacksonville and have come out and spent the day. That is the only ones that I could really know.

Mr. Smith:
That is all.

Mr. Boggs:
No questions.

The Court:
You are excused.

(Witness excused.)

308 MRS. R. B. CHAPMAN, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:
Q. What is your name?
A. Mrs. R. B. Chapman.
Q. Where do you live?
A. At Pilottown, or Fort George. They call it Pilottown and Fort George.
Q. Is that on or near Heckscher Drive?
A. Yes, it is right on Heckscher Drive.
Q. How long have you lived there, Mrs. Chapman?
A. Since April, 1932.
Q. April of 1932?
A. Yes.
Q. Do you operate any business?
A. I have a small grocery store.
Q. And how long have you had that store?
A. Since October, 1938.
Q. You established the store at that time?
A. Yes, sir.

Q. Where do you get the merchandise which you sell in the store, Mrs. Chapman?

A. Well, around here in Jacksonville.

Q. Have you ever bought any of your merchandise from outside of the state of Florida?

A. Well, how do you mean that?

Q. I mean, have you ever brought any from anyone up in Georgia, or any other state than Florida?

A. No, not direct, no.

Q. All that you get, you get through wholesalers in Jacksonville, do you?

A. Yes.

Q. You have had an opportunity to observe the traffic that passes over Heckscher Drive, have you not, Mrs. Chapman?

A. Well, I haven't paid very much attention to it.

Q. Can you give the Court any information as to the relative proportion of cars bearing out of State licenses, and the cars bearing Florida licenses that go over the road?

A. No, I have never observed it. I am afraid I could not give you anything accurate. It would be a wild guess.

Q. Do you know of any traffic which moves in or out Heckscher Drive between points outside of Florida and points inside of Florida?

A. What time do you mean this?

Q. At any time between October, 1938 to the present date.

A. Well, the only thing I can say, I have had three or four people from Atlanta come down and spend the week end, and things like that, and fish and rent from me.

Q. How often would they come, Mrs. Chapman? Would it be more than once in six months, or once in one month, or once in a year or what?

A. Well, I have three couples that came once a year for about three years in succession from Atlanta.

Q. Any others now?

A. Well, I don't keep a record of those people, so it would be hard to just think of it now. I had some man that came from Georgia and stayed a few days.

Q. That was just one trip?

A. Just one.

Q. What other such trips do you know of, Mrs. Chapman?

A. Personally, I don't know of any more that I can recall right at this time.

Q. Do you know of any businesses other than stores and fishing camps which are located on Heckscher Drive?

A. Businesses and fishing camps?

Q. No, any businesses other than stores and fishing camps that are located on Heckscher Drive?

A. I don't recall any now.

Q. Are there any hotels or clubs on Fort George Island?

A. Yes.

Q. Well, apart from those, do you know of any persons who run any sort of an industry or business other than a store like your own or a fishing camp like Sisters' Creek Fishing Camp?

A. Well, I don't know just what you mean there.

Q. Do you know of any factories down that way?

A. No.

Q. Do you know of any business offices or anything of that character?

A. No, I don't.

Mr. Smith:

That is all.

Mr. Hartridge:

No questions.

The Court:

You are excused.

(Witness excused.)

Mr. Smith:

Your Honor, one witness of mine is Mr. R. E. Williams, who is an attorney, and I wonder if counsel would be willing to excuse him from the rule and let him come in?

Mr. Hartridge:

I certainly will.

312 MRS. MARY J. PENLAND, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name?

A. Mary J. Penland.

Q. Where do you live?

A. White Shell Camp, Heckscher Drive.

Q. How long have you lived there?

A. Two years August 13th.

Q. Do you and your husband operate that camp?

A. Yes, sir.

Q. You rent from the North Shore Corporation, do you?

A. Yes, sir.

Q. Will you tell the Court, please, ma'am, whether there are any rooms or facilities for you to entertain overnight guests at the White Shell Camp?

A. Yes, there is one and that is all.

Q. Tell the Court, if you will, whether you have ever had occasion to rent that room to anyone coming down Heckscher Drive from out of the state of Florida?

A. Once.

Q. And who was that and when was that?

A. That was Mr. Jack Potter. He was from North Carolina. And it was along last summer, the first part of last summer.

Q. Now, Mrs. Penland, are you able to tell the Court of any other trips made by anyone to White Shell Camp from outside of the State of Florida?

A. No, I could not, no other one.

Q. Were there some of your relatives that came there once?

A. Well, yes, but they came to Jacksonville on the train, and then we went and got them. I don't know whether that is what you want.

Q. Any other instances like that one; have there been any?

A. Yes, once, my sister-in-law.

Q. You have had your sister-in-law come once?

A. Yes, sir.

Q. And Mr. Jack Potter came once?

A. Yes, sir.

Q. And that is all?

A. That is all.

Q. In operating that camp, you have occasion to notice the cars on Heckscher Drive, do you not?

A. Yes, sir.

Q. Tell the Court anything you can about the foreign cars that you have noticed on Heckscher Drive, that is, bearing out of state licenses?

A. Well, I haven't really noticed any that I can say I really noticed. Of course, I don't really have occasion to notice them awfully close, but I would judge I would know about it if there was somebody came there from out of the state right to our place.

Q. I was not talking about just to your place. I am talking about traffic up and down the road.

A. Up and down the road? I haven't noticed any up and down the road.

Q. Some time back, did you have occasion to talk to Mr. E. E. McKenna, about this particular lawsuit?

A. Yes, he was telling my husband and myself about it. We came, took that place over right after all of this happened. At least, he was telling us about it.

Q. And what did he tell you?

A. Well, he was telling us that it was all going to go to go to Court, and that he did not see how that the company could pay off all of the suits it was going to meet, and he started laughing about it, and said if there wasn't any other way he could take over the toll house.

Q. Take over the toll house and do what?

A. That take that money until he could get it.

Q. Until he could get what?

A. The money that he was suing for.

Mr. Smith:

Your witness.

Cross Examination.

By Mr. Boggs:

Q. What suit did you understand that he was talking about?

A. I don't know. This one, what I thought.

Q. You are sure it wasn't some suit about the removal of his own telephone?

A. I don't know. I thought it was about all of this.

Q. What was that answer?

A. I thought it was about all of it. He was telling us about all of it. You see, it was right during the time this all started.

Q. Did you understand by that, that Mr. McKenna was expecting himself to collect some money, as though he were one of the plaintiffs in this case? Did you understand that to be what he was talking about?

A. No, I wouldn't say that. But the way I took it, that he was—I don't know exactly how to—

Q. How long ago was that conversation?
A. Let me see. It was way over a year ago.

The Court:
I think that is all immaterial. Don't pursue it any further.

Mr. Boggs:
Very well, your Honor. No more questions.

(Witness excused.)

316 MR. R. E. WILLIAMS, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:
Q. What is your name, please?
A. R. E. Williams.
Q. What is your business, Mr. Williams?
A. I am an attorney.
Q. Where do you live?
A. 350 West 17th Street, Jacksonville.
Q. How long have you lived in Jacksonville?
A. I have lived in Jacksonville about 35 years. I have 30 years in the place where I am now.
Q. Do you share office space with me in the practice of law?
A. That is right, sir.
Q. State to the Court exactly what the relationship between you and myself is, please, sir?
A. There is no connection in the law practice whatever. We have the same waiting room, and the same girl answers the telephone and takes my telephone calls. She

does not do my stenographic work, and does not perform any services for me except making my appointments and answering my telephone calls. And then we have a separate—I have a separate office on one side of the waiting room, and Mr. Smith and Mr. Axtell have offices on the other side of the waiting room. There is no connection otherwise than that.

Q. Do you have any interest in or connection with the present suit? This is the combined case of Overstreet against North Shore Corporation and Scott against North Shore Corporation.

A. None whatever.

Q. Have you ever had occasion to travel Heckscher Drive?

A. Quite extensively.

Q. What is the occasion of you using the drive?

A. I have a camp near the end of the road, the last bridge on the road, to be exact, and have had it, that camp, since 1928, which is practically the entire time of the road. I have a cottage on there that I go down for week ends and other times.

Q. How often would you say you make use of Heckscher Drive in traveling to and from your camp?

A. At the present time, approximately once a week, or possibly a little bit more. At one time it was quite a bit more than that, but not in the last year or two, I havent't been down more than once a week, I would say.

Q. You have, of course, on traveling the drive, noticed the traffic on it somewhat, have you?

A. Yes, sir.

Q. Are you able to give the Court any information as to the approximate ratio of the cars bearing other than Florida licenses as compared to Florida cars using that drive?

A. You are speaking about at the present time, or any particular time?

Q. At any time, sir.

A. I think that right at the present time there is a scarcity of any cars on the road by the gasoline rationing. But there is an increase of foreign cars in Jacksonville, a great increase in foreign cars in Jacksonville, and for that reason I would say that as to this road out there, up until —well, the beginning of this present war, that the ratio would probably be five per cent, and at the present time, I would say that it is possibly eight per cent, according to my best judgment.

Mr. Smith:
Your witness.

Mr. Boggs:
No questions.

(Witness excused.)

318 MR. R. G. STEWART, having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name, please, sir?
A. R. G. Stewart.
Q. Where do you live?
A. 2316 Ernest Avenue, Jacksonville, Florida.
Q. How long have you lived in Jacksonville, Florida?
A. Seven years, the 7th day of November.
Q. At the present time, what is your business?
A. I am a telephone repairman.

Q. Are you regularly employed by any particular firm?

A. I am employed by the Southern Bell Telephone and Telegraph Company, but on sick leave.

Q. On sick leave?

A. Yes, sir.

Q. Do you know anything about the telephone line from toll house No. 1 on Heckscher Drive down to Pilottown, Florida?

A. Yes, sir.

Q. How have you become acquainted with that line?

A. I maintained it for approximately three years.

Q. Who originally employed you to maintain that line?

A. Mr. Pannell.

Q. Do you know what corporation he represented?

A. The Bayshore Company.

Q. Were you maintaining that line at the time that Mr. Pooser over here became the resident manager of the company?

A. I was.

Q. How long had you been maintaining it before Mr. Pooser became manager?

A. I suggest approximately a year.

Q. In the way of maintainance work, what did you do, Mr. Stewart?

A. Well, to start with, the line was so noisy that you could not—you could not talk over it on account of different conditions on the line, unbalances and improper transposition, and I went over the line and made repairs and put it in proper service.

Q. Now, in doing that, were you assisted by Mr. Booth, who is sitting out here?

A. No, sir.

Q. Were you assisted by any employe of the North Shore Corporation?

A. No, sir.

Q. On some occasions, did you require some help from men in the way of climbing poles or anything like that?

A. The first maintenance work I done on the line, I had a man help me.

Q. Who was he?

A. Horace Johns.

Q. Was he an employe of the North Shore Corporation?

A. No, sir, he is an employe of the Southern Bell Telephone Company.

Q. Who has ever helped you in the maintenance work?

A. No one, except my wife.

Mr. Smith:

Your witness.

Cross Examination.

By Mr. Hartridge:

Q. Did you do all the maintenance work down there, or did North Shore do some of it themselves?

A. I wouldn't be able to know about that. It is my understanding that they called me whenever they had trouble on the line, but if they made any maintenance work or any repairs on there, I wouldn't know it.

Q. If a pole fell down or got knocked down, they would put it up themselves, wouldn't they? You would not do that?

A. It is my understanding the poles are property of the Jacksonville Electric Light Company, and they maintain the line.

Q. Any break in the line that did not require any skilled work, they did not call you, did they?

A. Well, even a break in the line, if properly spliced, requires skill. It is done—

Q. You don't know how much work was done by the North Shore Corporation?

A. No, sir.

Q. But you think that there was some work done by them when you were not called?

A. I would not know.

Mr. Hartridge:

That is all.

Re-Direct Examination.

By Mr. Smith:

Q. You have had occasion to inspect the line whenever you have been up and down it since you took over the maintenance work, have you not?

A. Yes, sir.

Q. Have you ever observed any evidence of work done on the line other than what you did?

A. I think one time the line was broke down and they took a piece of iron wire and fastened it together some way. It was still hanging down to the ground. I don't know who done that, or anything like that. I went up there and fixed the line—I went up there to fix the line, and that is what I found, but I don't know who done it.

Q. That was on one occasion?

A. Yes, sir.

Q. Mr. Stewart, how often has the repair and maintenance of the telephone line required your attention?

A. Well, I should just judge approximately about three times a month.

Q. Three times a month, and for how long on the occasions when you would work on it?

A. Well, it would vary. As to the actual clearing of the trouble, without including the time to go out there, it varied all the way from fifteen minutes up to ten or twelve hours. I would average about five hours a trip.

Mr. Smith:
That is all.

Mr. Hartridge:
No questions.

The Court:
Come down.

* * * * * * * *

323 MR. W. W. POOSER, JR., having been produced and first duly sworn as a witness on behalf of the Defendant, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name?

A. W. W. Pooser, Jr.

Q. Where do you live?

A. 2929 Princeton Avenue, Jacksonville.

Q. How long have you lived in Jacksonville, Florida?

A. Lived here approximately 20 years.

Q. What is your business or occupation at the present time?

A. I am connected with the North Shore Corporation as its resident manager.

Q. How long have you occupied that position?

A. Since the first of October, 1941.

Q. Now, did you relieve—whom did you relieve when you became resident manager of the corporation?

A. Mr. John D. Pannell.

Q. Would you state whether or not Mr. Pannell's discharge had anything to do with the instant suit or its instigation?

A. I don't know.

Mr. Smith:
Your Honor, the marshal informs me Mr. Overall is here, if we can take him at this time.

The Court:
I think it would be a splendid idea to take him now.

Mr. Smith:
All right, sir.

(Witness temporarily excused.)

324 MR. ALLEN K. OVERALL, having been produced and first duly sworn as a witness on behalf of the Defendant herein, testified as follows:

Direct Examination.

By Mr. Smith:
Q. Please state your name?
A. Allen Overall.
Q. Where do you live?
A. Fort George, Florida.
Q. At what place at Ft. George?
A. The Old Rainbow Camp, or Camp Overall, right at the end of the road.
Q. At the end of Heckscher Drive?
A. That is right.
Q. How long have you operated Rainbow Camp?
A. A little over four years. Four years this past March.
Q. At the present time, you do not put in your full time at the camp, do you?
A. No, sir.

Q. What are you doing now, sir?

A. I am a machinist, St. Johns Shipbuilding Company. I started there April 1st of this year.

Q. But up until April 1st of this year, you did spend your time operating the camp?

A. Correct.

Q. Do you have any facilities there which can be rented to overnight guests, Mr. Overall?

A. No, sir.

Q. Do you know of any trips which have been made from points outside of the state of Florida down to your camp, to the Rainbow Camp, by anyone?

A. Yes, sir.

Q. Tell the Court about such trips as you do know about?

A. Well, before the war, we used to have—well, two, I guess you might call them clients. I can recall one from Atlanta and one from a little town up here in North Georgia. They used to come down about two or three times a year. They usually stayed out at Mrs. Chapman's, she has rooms, and they came down and spent the week-end or two or three days on fishing trips.

Q. Do you know of any other persons who came to your camp from outside of the State of Florida?

A. Would you consider my brother? He came down about once a year.

Q. Tell us more about him.

A. He traveled by automobile, and he lives in Memphis, Tennessee, and worked for the United States District Engineer, and before the war, he usually had a vacation and came down and spent it with us.

Q. Are there any others?

A. Those are the only ones I can give you specific names and addresses and so forth and so on.

Q. Now, in a general way have you had occasion to observe the foreign licenses, that is, out of state licenses that use Heckscher Drive?

A. Well, we have quite a few down there with foreign tags on them.

Q. Can you give the Court any idea of the approximate proportion between those cars and the Florida license cars?

A. That would be almost impossible for me to estimate, due to the fact I did not make any particular record of it. But, as I say, you know, we used to have quite a few foreign tag cars in Florida.

Q. Would it be your observation that we have more foreign tag cars here than we used to in proportion to the cars on the road?

A. Well, on the whole, yes. Since the shipbuilding companies started here, there is a whole lot more.

Q. What other things that are going on at Jacksonville at the present have occasion to bring in the outside cars?

A. Well, shipbuilding companies, and various war industries here, have brought hundreds of out of town cars into here.

Q. Do you sell any merchandise at your camp, Mr. Overall?

A. We just handle a little line of confections, cold drinks, beer, and so forth and so on.

Q. Where do you get those items?

A. We purchase them from various dealers here in Jacksonville.

Q. Have you ever had occasion to buy anything you sell at your camp from out of the state of Florida?

A. Yes, sir, I have bought novelties from Chicago.

Q. How often?

A. Well, two or three times.

Q. You have had two or three shipments of novelties from Chicago?

A. That is right, sir.

Q. And they are the only things you can think of that have been brought in from out of the state of Florida?

A. Well, here in the last few months, most of the—quite a number of our confections I noticed were packed out of town, but were delivered down here by local jobbers.

Q. You buy them from whom?

A. From local jobbers here in Jacksonville.

Q. You have not bought any of those confections from out of the State of Florida, have you?

A. No, sir, not purchased direct by myself.

Q. Will you please name for the Court the camps and the places of business which are served by Heckscher Drive, as far as you know them?

A. Well, the first is Braddock's Camp, I believe, at Eastport, and the second would be at Dunn's Creek, and the third one would be Brown's Creek Camp, I think Mrs. Cody operates that at the present time; and the fourth one is White Shell Camp, I don't know who operates that at the present time, as it changed hands recently.

Q. Is there one between Brown's Creek and White Shell?

A. That is the one I spoke of, Clapboard Creek camp. I don't know the name of the new proprietor of that camp. The next one is White Shell, and the next Mac's Sisters' Creek, and then mine.

Q. Is there a store between Mac's Sisters' Creek and yours?

A. Yes, sir, Mrs. Chapman's.

Q. What about Braddock's place at Eastport and Parnell's at Dunn's Creek? Describe them to the Court?

A. What sort of business?

Q. How would you compare them with other camps?

A. Well, I would not consider them as being operated as camps at all, I mean with respect as to how the other camps down the road are operated, because they don't

—I don't know, they have just a few old boats around there. In fact, I don't think Dunn's Creek is operating as a fishing camp, as I think Mr. Parnell and his boys are all in some kind of war work.

Q. What does Braddock have?

A. I noticed two or three boats around there. I don't know, but I doubt if this man Braddock is operating a fishing camp.

Q. Is there any place there to dispense merchandise?

A. No, sir, not that I know of.

Q. Is there a store between Braddock's place and Parnell's place?

A. There was Matthews' store at Eastport.

Q. That we haven't named? Do you have any other business industries, factories, or anything of mechanical nature, or anything like that on Heckscher Drive?

A. Not at the present time. There used to be a camp down at the North Jetties, but the war closed that up.

Q. That was the camp that Mr. Shield managed at the North Jetties?

A. That is right.

Mr. Smith:

That is all.

Cross Examination.

By Mr. Hartridge:

Q. Did you ever get any mail from out of the state?

A. Practically all of my mail comes from out of the state. I happen not to be a native of Florida.

Q. That is delivered over that road, isn't it?

A. Yes, sir.

Q. Have you ever talked to any people in your store and found out that they had come down from Georgia for a day's fishing?

A. I say, I have quite a number from out of town, you might call customers or clients, I don't know what the correct word would be.

Q. How far is it from there to the Georgia line?

A. The nearest town in Georgia I would imagine to be Folkston, I would say about fifty miles.

Q. People do drive down from up in that country to fish, and go back?

A. Well, the majority of people I noticed fishing in our place come from further up the state, from up toward Atlanta, and the northern part of Georgia, the northern part of the state, Macon and Waycross.

Mr. Hartridge:

That is all.

(Witness excused.)

Mr. Smith:

I have one more question.

Re-Direct Examination.

By Mr. Smith:

Q. You spoke of your brother. Was it your brother that came to visit you?

A. Yes, sir, my brother.

Q. These other people, when they come down on vacations, do they travel back and forth by Heckscher Drive between Pilottown and Jacksonville while here?

A. Yes, sir.

Q. They use their out of state licenses on those trips, do they?

A. Yes, sir, because they are just down here for a day or two, something like that.

Mr. Smith:
I think that is all.

The Court:
You may go down.

(Witness excused.)

332 MR. W. W. POOSER, JR., having been heretofore produced and first duly sworn as a witness on behalf of the Defendant, was recalled to the witness stand, and further testified as follows:

Further Direct Examination.

By Mr. Smith:
Q. Read the last question.

. . . The question was read.

Mr. Smith:
Q. Did you answer it?
A. I don't know, sir.
Q. Do you know whether the officials of the North Shore Corporation had any information that this suit was pending against them at the time you became resident manager?
A. They had no knowledge.
Q. How did they find out?
A. I discovered the notice of suit in a desk drawer after —well, after several days having assumed the office, and took the paper to you. That was the first knowledge I think we had of the suit.

Q. Did you happen to talk to Mr. Pannell about that paper? I guess that would be hearsay.

A. I don't recall.

Mr. Smith:

I will withdraw that question.

Q. Mr. Pooser, will you please describe to the Court the places of business up and down Heckscher Drive?

A. The first camp is Braddock's Camp, or Braddock's Camp, I think it is called, at Eastport. It is a shack, a fishing shack. He has, I think, three or four boats to rent, as well as bait, but as far as I know, no refreshments at all. Do you want fishing camps only?

Q. I want all the places of business of every kind.

A. The next is a store that is at Eastport, Mr. Matthews' grocery store. It is a general merchandise store. He carries a complete line of groceries and sells gasoline. Do you want me to go down and call the camps, sir?

Q. Go right ahead.

A. Pilottown and New Berlin and Dames Point. Mr. Kemp, Captain Kemp, has a store of similar nature to Mr. Matthews, with the exception he does not sell gasoline. There is a camp at Brown's Creek, a well-equipped camp. They sell bait, rent boats, and have a small line of canned goods, such as sausage, and things that they could get a hasty lunch with, and bait, of course. The next camp is Calpboard Creek. They are well supplied with boats, bait and tackle, and a small stock of canned goods, and also sell, of course, light drinks, such as beer, Coca Cola, and so forth. The next camp is White Shell Camp. White Shell Camp rents boats, sells bait, tackle, and soft drinks. I don't think they cater at all to any light lunch. The next camp is Mac's Sisters' Creek Camp. He rents boats, of course, and goes through the same procedure as the rest of them as to bait, tackle, and so forth. The next

place of business would be Mrs. Chapman's store at Pilottown.

Q. Going back to Mack's for a moment, what sort of stock of goods, if any, does he have?

A. Well, he also sells crackers and anything that could be thrown together for a lunch that a fisherman that was out there fishing, who did not bring his lunch, he could make out, canned sausage, or something of that nature, but nothing that you would call him a grocery store, by any means. The next store is Mrs. Chapman's store at Pilottown. She has a complete line of groceries, and a small store. She does not sell gasoline. However, she does have kerosene for the people in that vicinity. The next camp would be Rainbow Camp. Mr. Allen Overall operates that. He has boats, bait and tackle, as he told you. And that completes the picture, as far as I know it, sir.

Q. Has there been any other camp in that neighborhood at the end of the road?

A. Yes. The company owned a camp at the North Jetty, but recent war restrictions has caused us to close that camp, inasmuch as the Government has required people not to fish on the jetties, and as a result the man had to leave there, because nobody came down.

The Court:

Q. How many camps does the company own?

A. We own three camps at present, sir.

Q. Plus the one you mentioned?

A. We own three camps and buildings. We own the land, but Mr. Overalls owns his own building, just leases the land. That makes us four camps. We own the buildings on three, and the land on four camps.

Mr. Smith:

Q. The people that used to be at the North Jetty camp, where are they now?

A. They have since moved to Brown's Creek.

Q. Now, apart from the places you have named are there any hotels or clubs that are in this area?

A. There are two clubs on Fort George Island.

Q. Do you know of any hotels?

A. I know of none.

Q. Tell the Court the nature of those clubs?

A. They are, as far as I know, exclusive clubs, and they cater to local people as well as people from out of the state. I understand they do have some local membership, as well as people from the north. But they are open only certain seasons of the year. Now, that season varies, as I understand it, usually starting about December 20th, and the length of time I think is governed by the number of guests.

Q. Do you know anything about their rates or anything like that?

A. I don't know a thing about it, no, sir.

Q. Do you know anything about how people go to and from those clubs from out of the state?

A. I do not. I have seen a station wagon on the road, with Ribault Club on the side of it, but as far as seeing any baggage or passengers, I have not seen that.

Q. Have you ever seen any yachts about the club?

A. I have never been down to the basin, Mr. Smith, during the season. I only went to Fort George proper.

Q. Tell the Court what acquaintance you have had with Heckscher Drive, if any, prior to October 1st, 1941?

A. I made infrequent trips out there fishing.

Q. Infrequent trips?

A. That is right, possibly, I would say, once a month.

Q. Over how long a period of time?

A. Well, I would say since about 1937, or 1936, I guess.

Q. Are there any factories of any kind down Heckscher Drive?

A. There are none.

Q. Do you know of any offices or places of commercial character other than the stores, the fishing camps, or the clubs, that you can describe?

A. As far as I know there are none to exist.

Q. Do you know anything about the way the company operated the place, how the employes of the company worked, their hours, of labor, and pay and so forth, prior to October 1st, 1941?

A. Nothing definite, with the exception of the boys that worked on the labor crew, the colored boys, whose hours were kept regularly. The rest, we didn't know, we just had to guess at. In other words, in compiling these—

Q. Why was it necessary to guess at it?

A. Because they do not exist on the records. The hours were not kept.

Q. Where is Mr. Pannell?

A. I don't know, sir.

Mr. Boggs:

We will stipulate that Mr. Pannell's whereabouts are unknown to all parties litigant.

Mr. Smith:

All right, sir.

Q. Now, since you have been connected with the company, what arrangements have there been about repairs to the telephone line when they were necessary?

A. The only repairs to our telephone line since October 1st have been made by Mr. R. G. Stewart, who is an ex-Southern Bell employe. I say "ex", but he is on sick leave at present. He has done all our maintenance work.

Q. Did you go out and pick Mr. Stewart up to handle your maintenance work?

A. I did not.

Q. How did you become acquainted with him?

A. When we had our first trouble, after assuming this office, I asked of Mr. Pereira, who did that work, and he informed me a man by the name of Mr. Stewart, and gave me his phone number, and he has since been our regular man. Whether he was before or not, I don't know.

Q. Is it correct then that none of the employes of the North Shore Corporation has done any maintenance work on that telephone line since you took over?

A. That is correct.

Q. You assisted, did you not, Mr. Pooser, in preparing these tabulations on the phone calls, which are attached to the statement in this case?

A. Yes, sir.

Q. Do they establish that definite information that the company's records reveal, as shown on this list?

A. They do, as to long distance calls.

Q. How often do you go up and down Heckscher Drive, Mr. Pooser?

A. Seven days a week, and I have been so doing since the first of October.

The Court:

When you use "the first of October", you mean of the year 1941?

A. 1941, yes, sir, that is right.

Q. When you went to work for the company?

A. Yes, sir.

Mr. Smith:

Q. During that period, what has been your observation about the use of Heckscher Drive by cars bearing foreign licenses?

A. It has been very small in proportion to the Florida cars, the foreign cars.

Q. Do you feel in a position to give me an estimate of the proportion?

A. I do. I would say four per cent would amply cover any cars, that is, prior to Pearl Harbor.

Q. What do you say after Pearl Harbor?

A. After Pearl Harbor, I would say it might run six per cent.

Q. That is by observation, is it?

A. Absolutely, that is all.

Q. Tell the Court what you know about all of these records that are spread out on the table, and that have been put in the stipulation, or, rather, put in the tabulations attached to the stipulation?

A. It is a daily report made up by the attendant at No. 1 toll house. He takes the individual's report and compiles a small sheet, and that information is supposed to show the number of ticket sales, the number of roadsters, the number of trucks, passes and so forth. That is issued daily.

Q. Did you give any of the employes any instructions about the keeping of those reports prior to 1943?

A. Prior to 1943? I did not.

Q. Did you have any occasion to talk with any of them about it?

A. Prior to that time?

Q. Yes.

A. No, sir, I did not.

Q. State whether it is correct that in February of 1943, the company's auditors made an audit of these records and gave you the figure of the comparison between foreign cars and Florida cars, which is shown by this tabulation?

A. That audit was made, sir.

Q. When it was examined, what action was taken by you, if any?

A. In the compilation of these figures, it was noted that since October 1st—

Q. October 1st of what year?

A. 1941. That very few, if any, and in some months none, were being shown of foreign cars. That was discovered in February. I then asked the attendant why this was being omitted.

Q. Who was that now?

A. Mr. Pereira. And he advised me that he had instructions it was not necessary to show foreign cars.

Q. What did you tell him at that time?

A. I told him it certainly was necessary, and we wanted them shown daily from then out forward, and also to make a footnote of any of those cars where the cars were known by him to be local cars, such as Naval Air Station, or army officers, or anything that he could distinguish that car as being a local car.

Q. So far as you know, have your instructions to him been carried out?

A. As far as I know, to the letter, sir.

Q. What was your first information that would indicate that they were not being carried out?

A. We required him on June 4th, I believe it was, to also get the license numbers, and it has shown a decided drop since we have required the numbers.

Q. What was your first verbal information from him, if you had any, that he was not carrying out the instructions to the letter?

A. I don't know what you mean.

Q. Had he ever told you he was not carrying them out?

A. He never has, sir.

Q. Was his first statement that he was not carrying them out the one you heard from the witness stand here?

A. That is right, sir.

Q. Now, Mr. Pooser, about interstate traffic that goes over that road, or has ever gone over, will you please tell the Court what you know about such traffic?

A. I could not truthfully say that I have ever seen a car that could be readily distinguished as having come

from out of the state right directly to the road, but while we could not distinguish that, we do have foreign tags.

Q. Do you know of any commercial transactions that have resulted in the movement of articles in the channels of trade over that road?

A. I know of no such shipments.

Q. Prior to Mr. Pereira's testimony, did you know anything about the movement of horses over that road?

A. I did not, sir.

Q. And you know of absolutely no other movement in trade over that road?

A. Not as a shipment.

Q. What is the situation of the mail carrier, please?

A. The mail carrier uses the road daily for six days a week, with the exception of holidays, of course. She has a right of way pass. That was granted to her, I think, through some ownership of land out there, and not through the carrying of the mail.

Q. She then pays the company no toll for her passage over the road?

A. Not the first thing, sir.

Q. Do you know anything about the mail she carries, whether any of it originates out of the state of Florida or not?

A. I am sure it does.

Q. Do you know anything about it?

A. No, I do not definitely, but I assume that it does.

Q. You could not inform the Court whether any given percentage of the mail carried by her was in interstate transit?

A. No, sir, I would have no way of knowing it.

Q. Describe the vehicle in which the mail carrier carries the United States mail over Heckscher Drive?

A. If I remember right, it is—I don't know the type of automobile. It is a sedan. It is a privately-owned touring car.

Q. It is not a mail truck?
A. No, sir, it is a passenger vehicle.

The Court:
Is there an R. F. D. Route on it?

The Witness:
I think they call it Fort George Star Route. It is a Star Route, whatever that designates.

Mr. Smith:
As I understand it, if counsel agrees with my statement, the distinction between an R. F. D. and a Star Route, the Star Route has an office at the end of it, and this lady ends up at the Fort George post office, which is operated by the carrier, so they call it a Star Route instead of an R. F. D.

The Court:
It is an R. F. D., or they have boxes?

Mr. Smith:
Boxes along the road, yes, sir.

The Witness:
Yes, sir.

Mr. Hartridge:
As I understand it, that is true, and I am willing to accept his statement. I asked him what a star route was, and that is about what I got.

The Court:
Well, I think we all understand what it is.

Mr. Smith:
Q. Can you give the Court, Mr. Pooser, any information as to the relative percentage of the telephone calls

moving over the telephone line which have gone beyond the State of Florida since you took over your duties?

A. The percentage of calls?

Q. The percentage of telephone calls, yes, sir.

A. To points outside of the state of Florida, you mean?

Q. Yes, sir.

A. I would say it would be less than one per cent, sir.

* * * * * * * * *

Mr. Smith:

Q. Mr. Pooser, does the North Shore Corporation have any federal assistance of any form in the operation of this highway?

A. Any federal assistance?

Q. Yes, sir.

A. No. sir.

Q. With reference to the allegation in the complaint that the road is an integral part of the highway system of the United States, can you give the Court any information bearing upon that allegation?

A. It is distinctly a dead-end road, sir, and if anyone went down the road, the only way they could get out would be to turn around the loop and come out the same direction.

Q. Do you know what that allegation "integral part of the highway system of the United States" means?

A. No, sir. Doesn't it mean an important part? It means an important part, I should imagine, of the highway system of the United States.

Q. You have got no connection with the Federal Government, is that right?

A. None, none whatsoever.

Q. As far as you know, the Federal Government has no connection with the road save that the mail goes over it, is that right?

A. That is the only thing.

Mr. Boggs:
Save what?

Mr. Smith:
That the mails go over.

The Court:
It is connected with Route 17.

The Witness:
It intersects it, commences at that point, sir.

* * * * * * * * *

The Court:
Now, Route 17 is a federal highway. There is no question about that.

The Witness:
That is correct, sir.

The Court:
And the mail passes over Route 17 out of Jacksonville, to where this road intersects it, and then moves along this road to the post office where?

The Witness:
At Fort George.

The Court:
At Fort George?

The Witness:
That is right.

The Court:
All right.

Mr. Smith:
Q. Do you happen to know how the post office at Fort George was served before this road was built, sir?
A. I do not.

The Court:
Do you know whether there was a post office there or not?

The Witness:
I don't know whether one existed there before or not. I imagine there was, but my guess would be mail would be brought to Mayport and brought over by the water.

The Court:
All right.

Mr. Smith:
Q. But you don't know that it existed?
A. I don't know that it existed.
Q. What instructions have you given, if any, with reference to the keeping of the time of the employes, the toll collectors, who have served the telephone line since you have been resident manager of the company?
A. That their time should be accurately kept, and they should be paid thirty cents an hour by the Bayshore Light and Water Company.
Q. Effective as of what day?
A. April, I think, of 1942, if I remember correctly. I would not say that definitely.
Q. How many stations are there on the telephone line which goes down Heckscher Drive?
A. There are six.

Q. What is the largest number of stations that there have been on that line since you have been familiar with it?

A. Six is the largest number.

Q. What other line besides the telephone line with which we have been concerned in this case, goes down Heckscher Drive?

A. Doctor R. S. Wynn has a private line right directly over our line on the city light poles. On the opposite side of the road from Eastport, to the forest tower at Clapboard Creek, at or near Clapboard Creek, is a telephone line operated by the Florida Forest Service.

Q. Do you know where those lines originated? They terminate at the Forestry tower and Doctor Wynn's, but where do they start?

A. The line coming to the Eastport Forest tower, I am sure, is at Callahan, as that is their head office, and the line goes directly there.

Q. Now, does the line of the company have anything to do with that line?

A. The line to the forest tower?

Q. Yes.

A. No, sir.

Q. How about Doctor Wynn's line?

A. No, sir.

Q. Are there any other telephone lines that go down that road?

A. None with the exception of ours.

Q. Isn't there one that goes a short distance down the road from Toll House No. 1?

A. In other words, the Southern Bell does—they have a line going into Mrs. Bostwick's place.

Q. Do employes of the company have anything to do with that line?

A. They do not.

Q. You mentioned the city's poles. What are they?

A. The city furnishes power for that vicinity, and the poles are situated on the right of way.

Q. And where is our telephone line with reference to those poles?

A. It is directly on the pole itself, some—I guess fifteen feet from the power line itself.

Q. And who owns and maintains those poles?

A. The City of Jacksonville.

Q. And how far do the city's poles extend?

A. They extend to the Sisters' Creek drawbridge.

Q. That is at McKenna's camp?

A. McKenna's camp, yes, sir.

Q. What poles, if any, are there, to be maintained by either the North Shore Corporation or by the Bayshore Water & Light Company?

A. From Sisters' Creek to Pilottown, a distance, I would say of some two miles. The company extended that line and erected the poles.

Q. But that was before you came with the company, was it not?

A. That is right.

Q. Do you know when the City of Jacksonville acquired the ownership of those poles?

A. I do not, sir.

Q. Do you have any information on the subject at all?

A. I do not.

Q. Are there drawbridges on this road at Cedar and at Clapboard Creeks?

A. They are hand operated bridges. They can be opened, in other words.

Q. State whether or not either has been opened since you have been manager of the company?

A. There has been no occasion to open either bridge, sir.

Q. Did you have anyone in a subordinate position to you who was in charge of any part of the company's work at any time?

A. In charge of any part of the company's work?

Q. Yes, sir.

A. I had a road foreman.

Q. Who was that?

A. Mr. W. R. Stewart.

Q. State whether or not you employed Mr. Stewart as road foreman?

A. I did.

Q. Did you do that in cooperation, you might say, with me?

A. I did.

Q. Before employing Mr. Stewart, did you talk direct with me?

A. I discussed it with you first, and then had an interview with Mr. Stewart.

Q. Tell the Court what your interview with Mr. Stewart was.

A. He was instructed that he was to have full charge of the road crew and maintenance, and what his duties were.

Q. All right. What duties did he have?

A. His duties were to keep the road in repair, and bridges, and any buildings that the company might own that needed any kind of repair.

Q. Was he given any authority with reference to the hiring or firing of men under him?

A. He was told that the personnel was entirely up to him.

Q. Do you know of any hiring or firing that Mr. Stewart did while he was your road foreman?

A. I do.

Q. Tell the Court about that.

A. Probably—I don't know how many men he has hired, but in July or August of 1942, we had a stretch of road that had to be built, and I gave him permission to go ahead—

Q. When you say you had a stretch of road that had to be built, what do you mean?

A. The authorities made us complete a road we had there for a distance of 180 feet, which had to be covered with shell, and Mr. Stewart acquired, I imagine, six or eight new men to assist us in that work.

Q. Now, did you advise with him in getting those men?

A. I did not, sir.

Q. Did you have some experience with them about their pay a short time after he employed them?

A. The first week, sir.

Q. What was that?

A. I made the payroll up. I had not discussed with him what he had told them their wage would be, and when I delivered the envelopes, they said that it was a little shy, that Mr. Stewart had informed them that they would make forty cents an hour, instead of thirty-five, which I paid them. So I adjusted that on the next weekly payroll, and that made up the difference.

Q. You actually knew nothing of the contract between them and Mr. Stewart?

A. I knew nothing other than he told me of how many men he needed, and he was to get them.

Q. He has told this Court that before discharging or firing anyone, he always conferred with you on the subject. Did he confer with you in reference to these particular men?

A. He did not.

Q. Do you remember an instance when he has conferred with you about the hiring or firing of a man?

A. I think on one occasion there was a negro that he felt was not doing his job, so he came to me and said that he wanted to get rid of him, so jointly we did.

* * * * * * * * *

Q. Do you know, Mr. Pooser, or have any information about the quantity of traffic from either Western Union or Postal Telegraph Company to Mr. McKenna's camp over the telephone line?

A. I do not. We would have no occasion to know those figures.

Q. Why wouldn't you have occasion to know about it?

A. You mean the number of calls to Mr. McKenna's camp?

Q. The number of telegrams that go down there.

A. We have nothing to do with that transaction, a telegram.

Q. How are they transmitted?

A. They are called over long distance telephone to McKenna's, from Western Union, and our employes have nothing to do with the call except making the connection to let them talk.

Q. Your employes make that connection merely between Jacksonville station, over the Southern Bell, to Sisters' Creek?

A. That is right. On our lines, that is right.

Q. You spoke of making the long distance connection. State to the Court whether or not that telephone line is considered and classified as a long distance line out of Jacksonville?

A. It is now, yes, sir.

Q. And has been for how long, sir?

A. Since about the 1st of April, 1942.

Q. Would it be the first of April or sometime in the summer of 1942?

A. Well, I am not definite on that, sir. If I could look at the records, I could tell. I don't remember when we were set up as a telephone company. It existed from that time forward.

Q. Mr. Pooser, I want to ask you one question about your physical condition, please, sir. Is there anything wrong with you physically?

A. I had a thyroid operation about six or seven years ago.

Q. What has been its effect upon you, sir?

A. Well, it has left me kind of short-winded and nervous at times.

Q. Do you have to take anything for it?

A. I have to take calcium, yes, daily, in powdered form, and milk, and probably will the rest of my life, according to the physician.

Q. Do you have constant medical attention for that condition?

A. I do, that medication only.

Q. Does the doctor examine you from time to time?

A. Yes, I go by the hospital just about every three or four months. Yes, I have a general check-up.

Mr. Smith:

That is all.

Cross Examination.

By Mr. Hartridge:

Q. Mr. Pooser, you say you are classified as a long distance telephone in 1942?

A. That is correct, sir.

Q. That was after the Florida Commission ruled that the way you were operating, that you were a telephone company?

A. That is correct, sir.

* * * * * * * * *

By Mr. Lake:

Q. You stated with reference to Mr. Pereira that the statement he made on the witness stand this morning, that he did not correctly keep the record of cars from out of the state traveling back and forth by that toll house was not known to you until this morning?

A. No, you misunderstood that, sir.

Q. What are the facts?

A. I said it was not known to me until February, at which time Mr. Smith had required certain information, and in compiling that information, it was discovered that if any were shown, it was very few, and when questioned about it, Mr. Pereira told me that it was—

Q. You knew prior to this morning that he had not?

A. Oh, absolutely, yes, sir.

Q. Now, with reference to the pay of men operating the toll houses, for telephone pay?

A. Yes, sir.

Q. I understood you to say you had given instructions after a certain time that they were to be paid thirty cents an hour, and time and a half for time in excess of—

A. No, sir, I did not.

Q. What were your instructions?

A. That with reference to the telephone—that relates to the telephone only, where they were to keep the time accurately, the time each employe had on the difficulty?

Q. What difficulty?

A. On the telephone difficulty.

Q. They were only paid for that period of time they were on the telephone difficulty?

A. Yes, sir. In addition, they were receiving pay from the North Shore Corporation at the same time.

Q. And in addition thirty cents per hour also?

A. Well, I would not say that, sir. That varied as to the employe.

Q. But the pay for the telephone service was exclusive of that given them by the North Shore Corporation?

A. Yes, sir.

Q. And on a different basis?

A. That is correct.

Mr. Lake:

That is all.

Mr. Boggs:

No questions.

Mr. Hartridge:

That is all.

Mr. Smith:

Come down.

(Witness excused.)

Mr. Smith:

That is all we have for the moment, sir. I would like to interview the other witness before we put him on the stand.

The Court:

Now, you only have one more witness.

Mr. Smith:

We have only one more. We might put in some documentary evidence.

The Court:

Will you have any rebuttal?

Mr. Hartridge:

So far, none. We might introduce this, and I think we may dispose of one or two matters. Mr. Smith will probably admit that this is a part of the Act which incorporated them.

Mr. Smith:

That is correct.

The Court:

All right. Suppose you read it into the record.

Mr. Hartridge:

All right, sir. Laws of Florida, Special Act, 1925, Volume 2, Chapter 10490, Section 4.

(Reading):

"That any road or roads and bridges constructed, operated and maintained under the provisions of this Act, on which a toll is collected, shall be open for traffic at any and all times and maintained in a condition safe and suitable for travel, and the tolls to be collected for travel thereon shall not exceed the following schedule, to-wit:"

* * * * * * * * *

And thereupon the hearing was recessed to ten o'clock a. m., Friday, June 25, 1943.

And thereupon, at ten o'clock a. m., Friday, June 25, 1943, the hearing was resumed pursuant to recess of the preceding day.

The Court:

You may proceed.

Mr. Smith:

If the Court please, we have one agreement that I would like to place in the record at this time. Counsel agree that the settlement at Fort George is an ancient settlement; that the history of the area indicates the possibility, if not the probability, that the Huguenots landed there in April of 1562. In 1796, the King of Spain authorized the building of a chapel at the settlement, which at that time, was called by the Spanish, "San Juan". An Irish priest served the community at that time. And that the settlement has been continuous on Fort George Island ever since those days.

Now, Mr. Spencer, will you come forward, please.

360 MR. EDMUND B. SPENCER, having been produced and first duly sworn as a witness on behalf of the Defendant herein, testified as follows:

Direct Examination.

By Mr. Smith:

Q. What is your name, please?

A. Edmund B. Spencer.

Q. Where do you live?

A. 5218 Palmer Avenue.

Q. In Jacksonville, Florida?

A. Lake Shore.

Q. How long have you been living in Duval County, Florida?

A. Fourteen years.

Q. With what business firm are you conected?

A. Western Union Telegraph Company.

Q. And what is your position with the Western Union Telegraph Company?

A. Chief clerk.

Q. Mr. Spencer, are you acquainted with some clubs on Fort George Island down Heckscher Drive?

A. I used to be pretty well acquainted with practically everything down there, but recently, in recent months I don't go down there so much.

Q. I see. Have you had occasion to go to those clubs for any purpose?

A. Yes, sir. At one time, my duties required me to visit what they called all commercial agencies, on promotion business, good will and so forth, and I used to have occasion to go down to Heckscher Drive and the Ribault Club occasionally.

Q. Now, will you tell the Court, please, sir, in your own language, the type of organizations those clubs are?

A. Well, the only one I ever visited was the Ribault Club. It seemed to be a pretty exclusive sort of club. A lot of people from the east came down in the early part, usually, January, February and March, I think were the heaviest months, and they rested and fished and so forth.

Q. Now, since receiving a subpoena in this case yesterday, have you gone through the records of the Western Union as completely as was possible in the limited time you had to ascertain the business that had been done with Mr. McKenna, with the agent at Sisters' Creek?

A. Yes, sir.

Q. The tabulation which I have here in my hand is that tabulation, which has been prepared by me under your eyes and with your collaboration?

A. Yes, sir, that was prepared with the manager of the Regional Accounting Center, in whose charge those records are.

Q. You said the tabulation had been under your eyes and with your collaboration?

A. Yes, while that was being made.

Q. And you know this to reflect accurately such information as you have been able to get out of your records since the service of this subpoena?

A. Yes, sir.

Mr. Smith:

As I understand it, counsel will agree to my reading this record.

Q. Wherever we have figures in this tabulation, are your records as to the matters shown by these figures complete?

A. Wherever you have them.

Q. Wherever we have figures here?

A. Yes, sir. I might make one exception on that, as was explained there. In some months, Mr. McKenna would keep his records and send them in as to the number of messages he handled, where they were from, who they were addressed to and so forth; he would submit that at the end of the month, and we would prepare a voucher to pay him for his services. Now, in some months, those lists which Mr. McKenna sent in are missing; whether he sent them in and we lost them or misfiled them or not, I could not say, but the record there is made up from our copies of the vouchers from which Mr. McKenna was paid.

Mr. Smith:

For the months of November and December, 1940, 14 incoming messages; interstate not shown;

January, 1941, incoming, 20; interstate not shown;

February, 1941, incoming messages 46; interstate not shown;

March, 1941, incoming messages 62; interstate not shown;

April, 1941, incoming, 18; interstate not shown;

May, 1941; no record found;

June, 1941, incoming five, interstate three;

July, August and September, 1941, no record found;
October, 1941, incoming one, interstate not shown;
November, 1941, incoming three, interstate not shown;
December, 1941, incoming four; interstate not shown;
January, 1942, incoming seven; interstate not shown;
February, 1942, incoming 25; interstate not shown;
March, 1942, incoming 71; interstate not shown;
April, 1942, incoming 24; interstate 21;
May, 1942, incoming 5; interstate three;
June, 1942, incoming 4; interstate two;
July, 1942, incoming five; interstate, four;
No record found for August, September, October, November and December, 1942.
January, 1943, incoming five; all interstate;
February, 1943, incoming seven; all interstate;
March, 1943, incoming four; interstate not shown;
April, 1943, incoming two; interstate two.

The following is a tabulation of outgoing messages, there being no record found back of June of 1942:

For June, 1942, outgoing seven; interstate five;
July, 1942, outgoing three; interstate two;
August, 1942, outgoing five; interstate four;
September, 1942, outgoing one; interstate one;
October, 1942, outgoing none;
November, 1942, outgoing three; interstate one;
December, 1942, outgoing two; interstate two;
January, 1943, outgoing one; interstate one;
February, 1943, outgoing one; interstate one;
March, 1943, outgoing two; interstate one;
April, 1943, outgoing one; interstate not shown.

I might comment that that particular message was to a military post, and the location of the military post was not shown.

May, 1943, outgoing three; interstate three.

That is all from this witness.

Wherever I have said "not shown", I mean that the company has found no record of that particular period of time, or for the particular item in case of interstate messages, the information in the company's record did not reveal whether or not the messages were interstate messages.

That is all.

Cross Examination.

By Mr. Hartridge:

Q. How long have you been with the Western Union Telegraph Company?

A. Twenty-nine years.

Q. Are you familiar with the situation down on Fort George Island on the Heckscher Drive, and have you been familiar with it for the past,—since October 24, 1938?

A. Well, familiar how?

Q. Do you know anything concerning the volume of business that originated down there?

A. Well, back some years ago, I would say there was a pretty good volume of business down there in about three months of the year.

Q. Mr. Spencer, Mr. McKenna made the statement that he had in certain months collected over one hundred dollars. Could that possibly be true?

A. Well, as I recall offhanded—now, here is one voucher that he collected sixty-two dollars. That was for March, 1941, but I was thinking I remembered another one. Here is a voucher for—it is for three months combined, a voucher dated April 9, 1942; January, seven

deliveries; February, 25 deliveries; March, 71 deliveries, for which he received $103.00. That was for three months of business.

Q. Mr. Spencer, all of the figures you have got there are after Pearl Harbor; after the declaration of war, are they not?

A. Well, we have some figures back here in 1941. Yes, we have some figures for 1941, February, March and April.

Q. Those are the largest items that you have there?

A. No, I would say they are practically the smallest. Here is December, November and December, 1940, two months combined, only fourteen deliveries, one dollar each, was fourteen dollars. Then, January, 1941, 20 deliveries, twenty dollars; February, 1941, 46 deliveries, forty-six dollars.

Q. Mr. Spencer, generally between the period of 1938, 1939 and 1940, would you say that the volume of business was larger than it is at the present time?

A. Considerably, yes, sir. There has been practically no business now. As an illustration, McKenna hasn't even sent in his reports for the last month, because it wouldn't be over two or three dollars, and he saves them probably for two or three months, and sends them in at one time, like here.

Q. But there was considerably more volume prior to the time that this war got started?

A. Yes, sir.

Q. And it has dropped off ever since—since the war started and immediately prior to the war?

A. Yes, sir.

Mr. Hartridge:

That is all.

Re-Direct Examination.

By Mr. Smith:

Q. On these months of January, February and March of 1941. Is it not a fact that that is a fairly representative winter season for Mr. McKenna's agency?

A. I would say it is, yes, sir.

Mr. Smith:

That is all.

Mr. Hartridge:

No questions.

The Court:

All right. You are excused.

(Witness excused.)

• • • • • • • •

Mr. Smith:

There is one additional stipulation, sir.

The Court:

All right.

Mr. Smith:

It is stipulated and agreed by and between counsel for the respective parties that the toll road known as Heckscher Drive, and all the bridges were constructed in the years 1926 and 1927, and opened for traffic in the year 1928.

I would like to recall Mr. Pooser, your Honor.

368 MR. WILLIAM W. POOSER, JR., having been heretofore produced and first duly sworn as a witness on behalf of the Defendant herein, was recalled to the witness stand and testified further as follows:

Further Direct Examination.

By Mr. Smith:

Q. Mr. Pooser, state what the maximum toll you have for the use of Heckscher Drive?

A. The maximum charge for passenger cars is seventy-five cents for the round trip.

Q. Do you have higher charges for larger vehicles?

A. Yes, sir, for trucks, it might run as high as $2.50.

Q. That is the highest charge that could be made?

* * * * * * * * *

Q. You are acquainted in a general way, are you not, with the amount of maintenance work necessary to keep up the Sisters' Creek Bridge?

A. I am, in a general way, yes, sir.

Q. Will you tell the Court what the actual cost per year is of labor which is allocated to the Sisters' Creek Bridge only, Mr. Pooser?

A. I couldn't tell that only.

Q. That would be only the drawbridge tender, would it not?

A. That is correct.

Q. He is paid what?

A. He is paid $38.80 weekly.

Q. As of the present time?

A. As of the present time; that is correct.

Q. Have you calculated what that comes to by the year?

A. I did, roughly, over there. I think it is $2017.60, if I am not mistaken, sir.

Q. In view of your acquaintance with the actual repair work that is necessary on that structure, are you able to state to the Court, giving an outside or top figure, what the annual cost of the maintenance of that bridge would be?

A. In both material and labor?

Q. Yes, sir.

A. I would say, roughly, just as an estimate, a maximum of about $2500.00 to put it in repair, in good repair.

Q. Now, is the income of the North Shore Corporation confined to the collection of tolls for the use of the Heckscher Drive?

A. It is not.

Q. What other source of income does the corporation have, Mr. Pooser?

A. We have revenue from shell dredging; we have revenue from the rental of land, and also for camps; we have revenue from the sale of sand, and, of course, gasoline sales. We do sell some gasoline to the public as a convenience.

Q. Do you sell some timber?

A. We have some timber sales.

Q. What is the nature of the shell dredging operations? Does the company actually dredge the shell?

A. They do not. The Duval Engineering Company dredges the shell on a royalty basis.

Q. And for how long a period of time has the company had an income from shell dredging?

A. That, I would not be able to say, Mr. Smith.

Q. Has it been for the duration of your connection with the company?

A. It has.

Q. And what is the average annual income from shell dredging?

A. I would say it was approximately twelve thousand dollars yearly.

Mr. Boggs:

What was the witness' answer?

The Witness:

Twelve thousand dollars yearly would be the average.

Mr. Smith:

Q. And then you have income from other sources in addition to the shell dredging?

A. That is correct.

Q. Now, on such repairs as are made on the Sisters' Creek Bridge, on what portion of the bridge are they made, usually, Mr. Pooser?

A. They are usually made on the floor and decking.

Q. What is the floor and decking?

A. The decking is the top of the bridge that the vehicular traffic uses. The floor of the bridge is that understructure, caps, stringers, that support the deck; that are placed on the piling. The majority of the work is of that nature which is done. They have not done any work on the span with one exception since I have been here, in October.

Q. What do you mean by the span?

A. I mean, the portion where the boats pass right through the draw.

Q. In a general way, describe the Sisters' Creek bridge to the Court.

A. The Sisters' Creek bridge is a bascule type bridge; it raises in jackknife fashion, and I do not know the exact width of the draw.

Q. Approximately what is the width of the draw?

A. I wouldn't know. I guess one hundred feet; I do not know, to tell you frankly. I am not very good at estimating.

Q. Well, in relation to the total length of the bridge, about what proportion of the total length is represented by the draw span?

A. I guess one-tenth.

Q. One-tenth of the total length of the bridge?

A. Yes, sir.

Q. What is the type of structure of the bridge?

A. It is a wooden structure.

Q. And the type of the construction of the span is what?

A. The span is treated lumber covered with gravel and steel runners.

Q. And the jackknife is what?

A. That is made of concrete for weight, and steel structure.

Q. And the concrete is set in what?

A. In steel.

Q. The rest of the bridges of the—on the road are of what type construction?

A. They are of wooden construction.

Q. Is there any steel at all in either the Clapboard Creek or the Sisters' Creek Bridges?

A. I believe in the draw span there is. There is no overstructure, but some of the guard rails, they are made of steel.

Q. How about the floor of the Clapboard Creek and the Sisters' Creek Bridges?

A. I do not know.

Q. In the repair of the bridges, where has been the most expense to the company since you have been with it?

A. In the repair to the bridges, it has been in the decking, I would say.

Q. Can you attribute an equal portion of the cost of bridge repair to each of the bridges, or how would you figure that, for the Court?

A. Well, it is not shown in our distribution there.

Q. I understand that. You have no way of telling the Court definitely?

A. That is correct. No, sir.

Q. You know in a general way the time that has been spent on the repair of all of the bridges, don't you?

A. I do.

Q. Well, would you say that each of the seven bridges had about an equal amount of work and time spent on them?

A. No, sir.

Q. What would you say about that?

A. Well, I would say the bridges nearest to Jacksonville,—Dunn's Creek, Cedar, Clapboard, naturally have more cars pass over them than the bridges down at the foot of the line, and they are used more frequently. Therefore, they are in more need of repair.

Q. Which are the longest bridges, Mr. Pooser?

A. The bridge at Cedar Creek and the bridge at Dunn's Creek are the longest bridges.

Q. Where, in length, does the Sisters' Creek Bridge rank, Mr. Pooser?

A. That, I do not know. I think it is among the shortest.

Q. And, if I understand you correctly, the main expense in bridge maintenance is the flooring over which the traffic passes?

A. That is correct.

Q. You do not have any concrete floors in those bridges?

A. No, sir. Three by eights, twenty-two feet long.

Q. Wooden?

A. Wooden. Untreated lumber.

Q. These time books which I hand you are not those in evidence. These, in addition to those in evidence, constitute your whole time book record, do they not?

A. They do.

Q. Will you go through those three books that are not in evidence, and tell the Court every week that you can identify in which any employes of the company put in any time on the Sisters' Creek Bridge in repair work, maintenance work?

A. The week of April 20th, 1939, there is a charge, repairs, Sisters' Creek Bridge, $10.40.

Q. Do you have any knowledge of what those repairs were?

A. Charged to miscellaneous bridge and road expense on our books. I do not know.

Q. Please make a statement with reference to each week you specify?

A. Is it all right to skip around. I am taking them as you are handing them to me.

Q. Yes.

A. Week ending January 7, 1943, there is a charge to Sisters' Creek Bridge, $23.20. Improvement, it says.

Q. Do you know what that was?

A. I do not.

Q. That was during your time with the company, but you have no knowledge of it?

A. I have not. It just says improvement to Sisters' Creek Bridge.

Q. Before going to the next one, what was the total bridge repair for that particular week?

A. $16.80.

Q. And Sisters' Creek—

A. And $23.20 in addition. In other words, a total of fifty dollars, even.

Q. And what was the total repair expense of the week?

A. The total repair expense was $138.87.

Q. I will proceed with this and then put them in evidence. Go ahead. What else?

A. Week ending April 16, 1942, there was a charge to Sisters' Creek motor house. That apparently was the house that houses the auxiliary motor that was in use

when the city current failed. We have a gasoline motor there.

Q. That has to do with the draw span itself?

A. Yes, sir; in emergency only.

Q. What was the expense on that?

A. $19.40.

Q. And do you know who worked on the bridge at that time? Have you any way of telling?

A. No, sir, I haven't.

Q. What was the total repair that week?

A. On bridges?

Q. On everything?

A. The total labor was $148.82.

Q. Is there any breakdown for labor on the other bridges, besides the Sisters' Creek Bridge?

A. No, sir. They seemed to have worked on the road that week.

Q. All right. Are there any other weeks that you can identify?

A. July 9, 1942.

Q. All right. What does that show?

A. Sisters' Creek scaffolding.

Q. What is that?

A. They put in scaffolding when they get ready to replace a cap. They have to put scaffolding underneath the bridge.

Q. That is on the structure of the bridge and not the floor of the highway?

A. That is right.

Q. What is the total money for the week?

A. $17.80 was the charge to that particular week. The total repair charge for the week was $130.00.

Q. All right. What other weeks?

A. July 16th.

Q. What does that show?

A. Drawbridge gate.

Q. What year?

A. 1942.

Q. All right.

A. Drawbridge gate, $19.05.

Q. What is the drawbridge gate?

A. That is a safety device that stops traffic. It is automatic. When the span starts up, this gate opens.

Q. For the protection of the road traffic?

A. That is correct.

Q. And having nothing to do with the waterway traffic?

A. No, sir.

Q. Unless you had that a car might go in the river?

A. It would go in swimming if it didn't stop.

Q. What was the total expense that week?

A. $143.80. That seems to be all I find, sir, that I can readily identify as Sisters' Creek.

Mr. Smith:

At the request of counsel for the plaintiffs, I offer these in evidence.

The Court:

They may be received in evidence.

The instruments last above referred to were received and filed in evidence as Defendants' Exhibits 2, 3 and 4, respectively.

Mr. Boggs:

The reporter will please note the dates which I shall give in a moment on those three books.

The dates on Exhibit 3 are from January 1, 1942, to December 10, 1942;

The dates on Exhibit 4, are from March 10, 1938, to April 27, 1939.

The dates on Exhibit 2, are from December 17, 1942, to June 17, 1943.

Mr. Smith:

Q. Now, with the information that can be gleaned from these books, has the Court the most complete picture that the North Shore Corporation can give it as to the weeks in which employes of the company worked on the Sisters' Creek Bridge?

A. As far as we can give it.

Q. Is that also true with reference to any work that the employes might have done on the telephone line in any given week?

A. That is correct.

Q. Mr. Pooser, you have no independent knowledge of charges for—of what the charges for the maintenance of the telephone line may have been?

A. I do not.

Q. As entered in Mr. Pannell's records?

A. No, sir, I do not.

Q. You do not even know it is possible that some charges were for payments made for Mr. Stewart of the Southern Bell Telephone Company, as distinguished from payments made for labor of the North Shore Corporation, do you?

A. That is correct.

Q. Now, for some period of time, and during the progress of this trial, have you made a calculation of the cars shown under the heads of "Party" and "Miscellaneous" on these reports over here which have been tabulated into Exhibit I of the stipulation?

A. I have made such by hand.

Q. Do you have it with you, sir?

A. No, I do not.

Returning to counsel table and picking up a paper.

Q. Is this the tabulation you have made right here in the Court room?

A. That is correct.

Mr. Smith:
Mr. Boggs, is there any objection to reading that tabulation?

Mr. Boggs:
I didn't hear.

Mr. Smith:
Is there any objection to reading that tabulation. He has taken it for a stretch of time covered by those bulky things over there, the total of the miscellaneous plus the—

The Witness:
Party.

Mr. Smith:
—party, of the cars to show the actual number of vehicles.

Mr. Boggs:
No, we do not object to that.

The Witness:
That is as far as I could get.

Mr. Smith:
Will you read into the record so much of that tabulation, if you please, sir, as you have been able to make during the progress of the trial.

A. This is the total miscellaneous and party columns, the first two columns of the daily report summary sheet. In September, 1938, there were 383 cars to be deducted—

Q. You say cars?

A. I don't mean that. I mean, it might have been some of those might have been motorcycles.

Q. You mean the entries in those two columns?

A. Yes, I didn't mean cars deducted.

Q. All right.

A. October, 1938, 414; November, 1938, 348; December, 1938, 309; February, 1939, 376; March, 1939, 460; April, 1939, 512; August, 1939, 432; January, 1940, 622.

Mr. Smith:

Q. That is as complete as you could get it this time?

A. Yes, sir.

The Court:

Do they represent miscellaneous?

The Witness:

They represent the miscellaneous column, and what we call the party column. In other words, if the party was in Jacksonville, and was going out for one trip on a courtesy pass, and he would be given a party pass, that is represented in that column.

Mr. Smith:

That is all with this witness.

The Court:

Have you any questions?

Mr. Boggs:

Yes, sir.

Cross Examination.

By Mr. Boggs:

Q. Mr. Pooser—?

A. Yes, sir.

Q. Will you please state again what you said were the other sources of revenue of the company besides tolls?

A. The dredging of shell; sale of timber; sale of sand, and land rentals; gasoline sales.

Q. Now, the dredging of the shell, I think you said that has all been since the date of your employment?

A. It has been continuous since and I do not know how long before.

Q. But during your tenure of office, it has been on a royalty basis?

A. Yes, sir.

Q. And where is the shell obtained?

A. Often from the salt—obtained from the salt marshes.

Q. On both sides of your road?

A. No, no, it is down the creeks.

Q. It is down the creeks?

A. Yes, sir. In fact, the shell dredging is barely visible from the road.

Q. Your road itself is not used to convey any of that shell?

A. It is not. It is carried to Jacksonville by barge.

Q. And have you any information as to what becomes of it when it is carried to Jacksonville?

A. No, sir, I do not.

Q. From time to time I suppose you merely get an account sheet from the Duval Engineering Company?

A. Monthly; on the 10th of every month.

Q. You take their count on it, and that is the end of it, is that right?

A. That is correct. We have no reason to doubt their figures.

Q. And your road is not used in connection with the transportation of that shell at all?

A. No, sir.

Q. How about those camps? Aren't they all either directly on the road, or on short roads tributary to the Heckscher Drive?

A. Our camps, the fishing camps?

Q. Yes.

A. Yes, sir.

Q. Now, so far as the sale of timber is concerned, has there been any regular method of selling the timber?

A. No, sir. Just when we have a call for it, Mr. Harold goes out and cuts it and takes it to the mill.

Q. To what mill?

A. Mr. Rankin buys most of it.

Q. In Jacksonville?

A. Yes, sir. On Custer Street.

Q. Have you sold any of it that you know of, at all, out of the State of Florida?

A. No, sir, we have not.

Q. You have not?

A. No, sir.

Q. Now, so far as concerns the repairs on the Sisters' Creek Bridge, I hand you the Defendant's Exhibit No. 4, which is the time book of the company beginning with March 10, 1938, and I call your attention to certain items that you will find by stated weeks in here, reading, "Charge to bridges", for the week March 10, 1938, the item charged to bridges reads, $50.25. Have you any method of telling how much of that was attributable to repairs on the Sisters' Creek Bridge?

A. I do not. Not from that book, no, sir.

Q. Well, is there any record of the company that you know of that would show?

A. I do not know whether they will show at that time or not.

Q. Yes. The week following that, March 17, $52.06, charged to bridges. You have the same answer as to that item?

A. Yes, sir.

Q. And I ask you to run rapidly through that book and tell me whether you don't find items similar to that for most of the weeks in that book?

A. It seems to be the way it is shown so far.

Q. Now, I hand you Plaintiffs' Exhibit No. 4, which is the time book for the week beginning with May 4, 1939. Examine that book and state whether or not you do not find similar items of charges to bridges, without any allocation of the amount to any particular bridge, and if that is not the customary method of handling it?

A. It seems to be, yes, sir. I didn't go completely through the book, but it seems to be the practice.

Q. But such bridge items were lump sum items, were they not, Mr. Pooser?

A. Charged to bridges, and no breakdown.

The Court:

Those are all in evidence, are they not?

Mr. Boggs:

They are all in evidence.

The Court:

They show on their face whether or not there is a breakdown?

Mr. Boggs:

Yes, sir. I merely comment, your Honor, that apparently it was only in the recent books that there was any attempt to make a separate distribution for the Sisters' Creek Bridge.

The Court:

That will undoubtedly appear from the books themselves.

Mr. Boggs:

Yes, sir.

The Court:

Are those all the questions you have of this witness?

Mr. Boggs:
That is all.

Mr. Smith:
Just a minute, Mr. Pooser.

Re-Direct Examination.

By Mr. Smith:
Q. You stated in answer to one of Mr. Boggs' questions that all of the company's fishing camps were located on Heckscher Drive or on roads tributary to it. Does your company not own a camp by the name of Cedar Point?
A. They do.
Q. Is that on Heckscher Drive, or on a road tributary to it?
A. You can get there over Heckscher Drive, but you can also get to it from Main Street.
Q. Is Heckscher Drive the shortest drive to that camp, Mr. Pooser?
A. No, sir.

Mr. Smith:
That is all.

Mr. Boggs:
No more questions.

The Court:
You may come down.

(Witness excused.)

Mr. Smith:
Mr. Boggs, can you agree that Mr. John B. Pennall attempted to employ Mr. Hartridge to bring a Wages and

Hours suit against the North Shore Corporation immediately after his discharge?

Mr. Boggs:

I don't think I would want to agree to that without talking with Mr. Hartridge?

The Court:

Who is Pannell?

Mr. Smith:

He was the manager who was discharged on October 1st, 1941.

Mr. Hartridge:

I will be glad to take the stand and tell the truth about it.

The Court:

In what particular would that be relevant in this case?

Mr. Smith:

We shall argue to the Court that there is great significance in the dropping off of the record of these cars as of October, 1941, in view of the testimony of the witnesses that they got no instructions in that regard from Mr. Pooser, the present manager of the company. It came from the old management, and the whole of the old management is hostile. That is material here.

The Court:

And the point you are making is, you are asking counsel to stipulate with you that Mr. Pannell attempted to employ him to handle a Wages and Hours case for him against the company?

Mr. Smith:
Yes, sir.

The Court:
I don't see its materiality.

Mr. Smith:
All right.

The Court:
If you think it is, I will you get it into the record. What are the facts about it, Mr. Hartridge?

Mr. Hartridge:
The fact is, there was a considerable period, I think there was about a period of four months after this case was started, Mr. Pannell came to my office, and he had a typewritten letter to me, I think it was about fifteen pages long, trying to explain to me why he was not an executive, and he said he wasn't an executive; he had to do his own typewriting, and he informed me that Mr. Erby of the Wage and Hour Division had informed him that he did not think he was an executive.

The Court:
That is beside the point. Did he hire you to handle his case?

Mr. Hartridge:
He asked me what I thought, and I told him I thought he was an executive, and I didn't change my mind, and he walked out of the office, and I have never seen him since.

The Court:
His memorandum and discussion with you were for the purpose of engaging you to represent him in case you concluded or thought he had a case?

Mr. Hartridge:
Yes, but I didn't think he did.

Mr. Smith:
I am satisfied with that.

Mr. Hartridge:
I only saw him once. That is what I want in the record.

The Court:
Do you have any further evidence?

Mr. Smith:
I think that is all, your Honor.

The Court:
Have you any rebuttal?

The Court:
The defendant has rested.

Mr. Boggs:
We will call Mr. Booth.

Rebuttal:

389 JAMES F. BOOTH, having been heretofore produced and first duly sworn as a witness on behalf of the Plaintiffs herein, was recalled to the witness stand, and testified, in rebuttal, as follows:

Direct Examination.

The Court:
He has been sworn.

Mr. Boggs:
Yes, sir.

By Mr. Boggs:

Q. Mr. Booth, have you, at my request, reviewed the time book or books of the company in evidence in this case for the period beginning January 1, 1941, and running on to the termination of your service with the company, which was in October of 1941. Have you reviewed those books?

A. Yes, sir.

Q. And with the request on my part that you identify such items as were shown on those books with reference to telephone maintenance?

A. Yes, sir.

Q. And did I not collaborate with you in preparing such a tabulation, and did you check those figures with me as we went along?

A. Yes, sir.

Q. Those figures correctly reflect what the books show with reference to those items; is that right?

A. Yes, sir.

Mr. Boggs:
I will now read those items into the record.

Mr. Smith:
I think that that would not be appropriate, sir. I may be able to stipulate with counsel on this, but I want to take a look of what he says here is four weeks on maintenance. I think it is four weeks of original construction. I will agree that counsel's tabulation is correct except that the entries for the weeks of July 31st, August 14th, August 21st and August 28th show charged to the telephone line rather than to maintenance.

The charge to the telephone line. Does that charge cover construction and not maintenance?

Mr. Smith:

I am not clear on that, but in the stipulation that long yellow exhibit attached to the stipulation shows that the line was extended at that time from Sisters' Creek to Pilottown.

Mr. Boggs:

Do you have any objection to reading those into the record? I would ask that you agree that they are maintenance.

Mr. Smith:

In view of the statements, no, sir, I have no objection.

Mr. Boggs:

From Exhibit 5, May 1, 1941, $7.14—strike that out.

April 10, 1914, $7.14; April 17, 1941, $17.91; May 1, 1941, $7.14;

From Exhibit 6, July 31, 1941, $7.70; August 14, 1941, $64.20. The item has this explanation, if the Court please, the item reading "tel. line." August 21, 1941, $51.20; item reading, "tel. line". August 28, 1941, the item reading "tel. line". September 4, 1941, $1.95.

Q. Now, Mr. Booth, with reference to telephone maintenance, what was the fact about telephone maintenance during the period from January 1st, 1941, up to October of 1941, when you left the service of the company? Who did do the maintenance work on the telephone line during that period?

A. I done most of the work there. Mr. Stewart come out there; they had trouble on the line.

Q. He testified here, did he not?

A. Yes, sir. He was out two or three times. I do not know exactly how many times. He brought equipment out

from the Southern Bell Telephone Company trying to locate what he thought was a ground on this line.

Q. Mr. Booth, you do not hold yourself out to be an expert technical telephone man, do you?

A. No, sir. I probably wouldn't have known how to use that equipment.

Q. There were some times when some one, who knew more about the technical side of the business than you did, had to be called in; is that right?

A. That is right.

Q. Now, was Mr. Stewart's work, did that appear on the time records that you turned in to the toll keeper to be recorded in that time book?

A. No, sir, I never kept any time on him.

Q. Whatever arrangements were made about Mr. Stewart were not in any way made through you?

A. No, sir.

Q. And all the way up to the time, or approximately the time when you left the services of the company, is it a fact that you were from time to time with your repair crews, doing a certain amount of work in connection with the ordinary maintenance of the telephone system?

A. That is right, yes, sir.

Q. Would you be able to say with reference to the items that you found in that book during August, the latter part of August of 1941, where the explanation given is telephone line, would you have any way of telling whether all of that was pure construction or whether it was a mixture of construction work and ordinary maintenance?

A. I wouldn't have any way of telling.

Q. You wouldn't have any way of telling?

A. No, sir.

Mr. Boggs:

All right. That is all.

The Court:
Any questions, Mr. Smith?

Mr. Smith:
Yes. I didn't know he was through.

Cross Examination.

By Mr. Smith:

Q. Are you able to inform the Court when the telephone line was extended from the Sisters Creek Bridge to Pilot town, Mr. Booth?

A. It was shortly after Mr. McKenna's phones were removed from his place. Now, the date, I do not know.

Q. Wasn't there some of that construction before the removal of that telephone?

A. MacKenna's?

Q. Yes.

A. I don't think so.

Q. Who did do that construction work?

A. I did.

Q. The crew didn't help?

A. Yes, sir.

Q. They did help you?

A. Yes, sir.

Q. You are not able to tell the Court during what weeks that construction work took place?

A. No, I couldn't say just what weeks it took place.

Q. You couldn't tell the Court during which of the weeks of this list here you engaged in construction of this telephone line?

A. Well, it appears here, August 14th and August 21st.

Q. Are they the only two?

A. Well, here is one, April 17th. And I know it was not constructed that far back.

Q. Is that the only one?

A. There is a total of $17.91 for expense there.

Q. Is that the only one that didn't involve construction work?

A. I know it didn't begin May 1st nor April 10th.

Q. All right. What else?

The Court:

Does your record show then the constructoin was done?

Mr. Smith:

By this exhibit, it shows here May, 1941, but I confess it might have been in error. He says it was after McKenna's phone was taken out.

The Court:

When was that?

Mr. Smith:

That was approximately August 1st.

A. That is right. It wasn't in May.

The Court:

Q. Well, then, so far as your information is concerned, you do not have any better information than he has?

Mr. Smith:

I don't have as good, sir.

The Court:

All right. We will just leave the record in that unsatisfactory condition.

Any further questions from this witness?

Mr. Smith:

No, sir.

Mr. Boggs:
No, sir.

The Court:
You may be excused.

(Witness excused.)

The Court:
Have you another witness?

Mr. Boggs:
Plaintiffs rest.

The Court:
All right.

• • • • • • • • • •

Anything further?

To which inquiry there was no response.

The Court:
Court will be in recess until further orders.

NORTH SHORE CORPORATION

HECKSHER DRIVE

DAILY REPORT

SUMMARY

No. 31 Date 5/31/43

317

	STATION 1		STATION 2		TOTAL
	ONE WAY	ROUND TRIP	ONE WAY	ROUND TRIP	
Tickets on hand	126	1281	23	69	1499
Tickets Issued	-50	+950	+50	+50	1000
Total	76	2231	73	119	2499
Tickets Sold	3	114	11	15	143
Tickets on hand	73	2117	62	104	2356
Coupon Tickets on hand	3				
Coupon Tickets Sold	0				
Balance on hand	3				
Cash on hand	25.00		5.00		30.00
Cash from sales	63.20		9.80		73.00
Total	88.20		14.80		103.00
Cash turned in	63.20		9.80		73.00
Balance on hand	25.00		5.00		30.00

TICKET SALES						TOTAL		Passengers	Total Cars	Foreign	Passes No. 2	Traffic Lost	No.	Cash	
Misc.	Party	Passes	Trucks	Roadsters	Touring	One Way	Round Trip								
0	0	5	0	5	33	0	38	114	43	7	0	0	1	19	75
3	0	4	0	11	65	3	76	212	83	12	0	0	2	43	45
0	0	3	0	0	16	8	8	51	19	0	3	0	3	6	25
0	0	3	0	2	8	3	7	42	13	0	3	0	4	3	55
3	0	15	0	18	122	14	129	419	158	19	6	0	-	173	00

Tickets Under Report:

One Way No.	C14525	to No.	C14528- 3	C14379 To No	C14390- 11
Round Trip No.	B006053	to No.	B006066-13	A74977 "	A74981- 4
	E005616	"	E005618- 2	B006236 "	B006247- 11
	C14703	"	C14723- 20	D001989 "	D001989- 0
	A74651	"	A74730- 79	E005682 "	E005682- 0
			117	C14691 "	C14601- 0
			26	B006151 "	B006151- 0
			143		26

Pltffs EXHIBIT #2
Overstreet, et al
vs
North Shore Corp.
FILED IN EVIDENCE
6-23-43 --
EDWIN R. WILLIAMS, Clerk

Condition of Road:— Fair

Weather:— Cloudy

Accidents:— none

George A Pereira

AMBROSE THE PRINTER

#393-J
#588-J

397

COPY BOUND VERTICALLY

The North Shore Corporation.
Hecksher Drive.
Daily Report.

No. 31. Date 5/31/43.

Ticket Sales								Total					
Misc.	Party	Passes	Trucks	Rdsters	Touring	One Way	Round Trip	Passengers	Cars Total	Foreign	Passes No. 2	No.	Cash
3	0	4	0	11	65	3	76	212	83	12	0	2	43.45
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
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Tickets Under Report:

One Way No.	C14525	to No.	C14528	 3
Round Trip No.	B006053	to No.	B006061	 8
	A74651		A74707	 56
	C14703		C14713	 10
	E005616		E005618	 2
				79

Condition of Road: Fair.
Weather: Cloudy warm.
Accidents: None.

J. A. WHICHARD,
Toll Collector.

The North Shore Corporation.
Hecksher Drive.
Daily Report.

No. 31. Date 5/31/43

Ticket Sales								Total					
Misc.	Party	Passes	Trucks	Rdsters	Touring	One Way	Round Trip	Passengers	Cars Total	Foreign	Passes No. 2	No.	Cash
0	0	3	0	0	16	8	8	51	19	0	3	3	6.25
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....

Tickets Under Report:

	A74977		74980	3
One Way No.	C14379	to No.	14387	8
Round Trip No.	B006236	to No.	006241	5
	D001989		001989	0
	E005682		005682	0
				16

Condition of Road: Fair.
Weather: Fair.
Accidents: None.

G. J. ANDREWS,
Toll Collector.

The North Shore Corporation.
Hecksher Drive.
Daily Report.

No. 31. Date 5/31/43.

Ticket Sales							Total						
Misc.	Party	Passes	Trucks	Rdsters	Touring	One Way	Round Trip	Passengers	Cars Total	Foreign	Passes No. 2	No.	Cash
0	0	3	0	2	8	3	7	42	13	0	3	4	3.55
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....
...	...	...	...	...	...	...	...	...	...	...	...	...	.....

320

Tickets Under Report:

	A74980		74981	1
One Way No.	C14387	to No.	14390	3
Round Trip No.	B006241	to No.	006241	6
	D001989		001989	0
	E005682		005682	0
				10

Condition of Road: Fair.
Weather: Fair.
Accidents: None.

D. G. STEWART,
Toll Collector.

401 OPINION OF COURT.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(Title Omitted.)

These cases were consolidated for trial, and were tried at Jacksonville, Florida, on June 23-25 inclusive, 1943, before a Judge without a jury; as to case 393-J, upon the issues made by plaintiffs' second amended complaint (in which The North Shore Corporation is named as sole defendant), and the answer filed thereto by the defendant as to case 588-J, upon the complaint and answer of the defendants. At the commencement of the trial, plaintiffs in case 588-J announced that they also dismissed Bay Shore Water & Light Company as a party defendant. Therefore the word "defendant" as used herein will refer only to The North Shore Corporation.

Opinion of Court.

The Court, at the conclusion of the trial and arguments of counsel, announced its decision as follows:

It seems to me that the Supreme Court in its decision in this case left little for the Trial Court to do other than determine the amounts the several plaintiffs are entitled to recover when the case came back here for rehearing. While the Supreme Court in stating what was involved in the case used the allegations of the complaint in expressing the issues which it considered and decided, it is hard for me to see that many of the allegations of the complaint are of any particular importance now in disposing of the legal questions involved in this case and that view is substantially borne out by the more recent decision of

the Supreme Court in McLeod v. Threlkeld, et al., decided June 7, 1943. In that case the Supreme Court, in referring to its decision in Overstreet v. The North Shore Corporation, said:

"Employees engaged in operating and maintaining privately owned toll road and bridges over navigable waters are 'engaged in commerce'."

In reading the Overstreet case in the first instance, it seemed to me that was in effect and substance the Court's holding and of course the language of the Supreme Court used in the McLeod case as to its holding in the Overstreet case very definitely confirms the fact that what the Court held in the Overstreet case was that employees engaged in operating and maintaining a privately owned toll road and bridge over navigable waters are engaged in commerce and are subject to the Fair Labor Standards Act.

On the basis of the decision of the Court in the Overstreet case and its statement in the McLeod case of what it held in the Overstreet case. I hold that the Fair Labor Standards Act is applicable to all employees of The North Shore Corporation engaged in operating and maintaining the toll road and bridges which this company maintained and operated in Duval County.

The extent to which these employees were engaged in different activities, such as collecting tolls, operating draw bridges, repairs to road and bridges, and the operation of the telephone line, seems to me to be unimportant, although the testimony submitted shows that many of the employees devoted some part of their time to two or more of these several operations. It is my opinion that under the decision of the Supreme Court in this case there is no legal necessity for a division of their time as between the time they worked on the highway, on the bridges, on

the telephone line or any other incidental work they may have done pertaining to the operation of the toll road. They were covered by the Fair Labor Standards Act when performing any of these sevices. I therefore hold that the employees are entitled to compensation under the Fair Labor Standards Act for the full time they worked.

While I have sat here and permitted you gentlemen to make a record on the question as to the extent of use of this toll road by automobiles traveling in interstate commerce, it is my opinion that whether or not it was "substantial" is unimportant. This toll road being a public highway and being used as such and accessible to automobiles moving in interstate and intrastate commerce, and available to both classes of traffic on equal terms, and actually used by both classes of traffic, it is, in the opinion of the Court, immaterial whether the percentage of interstate traffic is five per cent, or twenty-five per cent. or any other percentage. The Court does not hold that an occasional or accidental interstate movement over this toll road would make this highway an instrumentality of interstate commerce, but it is my opinion that the evidence offered by the defendant as to the amount of interstate traffic using the highway is sufficient to bring the employees of the defendant within the Fair Labor Standards Act. As I construe its opinion, the Supreme Court held in this case that employees engaged in operating and maintaining a privately owned toll road and bridge over navigable waters are engaged in commerce and are subject to the Fair Labor Standards Act, and that their status under this Act is not dependent upon whether the amount of interstate traffic is substantial more or less.

After announcing its decision in the case, the Court appointed an auditor to state and report the amounts due the several plaintiffs for unpaid wages, overtime wages and penalty, and having considered the pleadings, the evidence adduced at the trial, the stipulations of the parties

and the auditor's report, the Court makes the following findings of fact and conclusions of law.

Findings of Fact.

1. Defendant The North Shore Corporation is a corporation organized and existing under the General Corporation Law of the State of Florida. It owns and operates the toll road hereinafter mentioned. This toll road is operated under and by virtue of a legislative franchise existing under Chapter 10490, Laws of Florida, 1925, as amended by Chapter 12494, Laws of Florida 1927, and by virtue of compliance with the terms of those statutes. Chapter 10490 as amended among other things includes the following provision:

"Section 4. That any road or roads and bridges constructed, operated and maintained under the provisions of this Act, on which a toll is collected, shall be open for traffic at any and all times and maintained in a condition safe and suitable for travel, and the tolls to be collected for travel thereon shall not exceed the following schedule, to-wit."

2. The toll road owned and operated by defendant connects with U. S. Highway No. 17 a short distance north of the municipal limits of the City of Jacksonville. U. S. Highway No. 17 is a national arterial highway connecting Jacksonville, the County seat of Duval County, Florida, with New York City and points north. Defendant's toll road extends from its point of intersection with U. S. Highway No. 17 about seventeen miles in an easterly direction to a point near the westerly shore of Ft. George inlet where it comes to a dead end. At Pilotstown or Ft. George Post Office, the toll road connects with a county road serving solely Ft. George Island, thus the toll road

affords the only means of land communication between Ft. George Island and the rest of the United States. The toll road was built and opened for traffic in 1928.

3. On the toll road are located three bridges over navigable streams, one over Cedar Creek, one over Clapboard Creek, and one over Sisters Creek. The drawbridge over Cedar Creek and the one over Clapboard Creek are hand-operated, and no proof has been adduced showing that any interstate commerce has been transported through the waterways flowing under these bridges since the effective date of the Fair Labor Standards Act. Sisters Creek is a part of the intercoastal canal extending from Miami to New York City, and that portion of the canal is constantly used in interstate commerce by pleasure craft and freight vessels plying between Florida and the states lying to the north thereof. The drawbridge operated by defendant over Sisters Creek is constantly raised and lowered to permit passage of boats engaged in interstate commerce. Reports made officially by the Chief of Engineers of the United States Army show the following figures as to commerce in this portion of the canal for the years 1938, 1939 and 1940:

Year	Vessel Traffic tons	Rafted tons	Total tons	Passenger Recretational
1938	159,296	2,361	161,657	24,300
1939	267,832	1,044	268,876	15,900
1940	287,355	52	287,407	.....*

Of the foregoing freight tonnage the following represented through traffic for the year 1940, the remainder being local: Northbound—total 144,450 tons; southbound—total 85,164 tons.

*Beginning 1940 passengers on charter and excursion boats only are included.

4. On Ft. George Island are located two "exclusive" social clubs, Ribault Club and Ft. George Club. In normal times these clubs are open from December to April, Florida's usual winter social season. During the season of 1942-43 on account of the war, Ribault Club did not open. The records shows that for the years indicated, patronage at these clubs was as follows:

Ft. George Club—	1938-1939.....	45
	1939-1940.....	42
	1940-1941.....	59
	1941-1942.....	14
	1942-1943.....	9
Ribault Club	1941-1942.....	88

Nearly all this patronage comes from outside of Florida and it was established that the guests arrived at these clubs in three different ways: (1) By rail to Jacksonville and by the club station wagon or taxi cab from Jacksonville over the toll road to the clubs; (2) by travel in automobiles directly from out of state points to the clubs, and (3) by yachts over the inland water-way. For the most part, out of state members and guests reached the clubs by the first mentioned mode of transportation.

5. Located on the toll road and served by it are several fishing camps which rent boats to fishermen, sell them bait, rent them tackle and generally cater to their needs. Several of these places serve light meals. Most of them carry a stock of cracker sandwiches and food for light lunches which fishermen might take in boats with them. These camps are open to and frequented by the public who travel to and from the same in automobiles which use the toll road. The defendant also advertises points of interest along the highway inviting the tourist travel to the state to visit these points of interest.

The evidence as to the percentage of automobiles bearing out of state license plates that use the highway annually since the effective date of the Fair Labor Standards Act is extremely unsatisfactory, except for a short period prior to the hearing in this case, and this evidence shows that the overwhelming majority of the automobiles moving over the highway since gasoline rationing went into effect bear Florida license plates.

Every merchant with a place of business on the toll road testified at the hearing and only one such merchant testified that he received interstate shipments of goods, and he testified to the receipt of only three such shipments. There was some further testimony of additional movements of merchandise over the highway, but the total of all such movements was not in excess of fourteen in the period from 1938 to 1942 inclusive.

However, it is clear from the evidence in the case that the toll road was at all times open to interstate traffic of every kind and character on the same terms as intrastate traffic moved over the road. It appears from the evidence in the case that the interstate use of the road was neither occasional nor accidental. The evidence establishes and in fact defendant admits, that the toll road is used in interstate commerce. The Court makes no specific finding that such use was "substantial", nor does the Court make any finding that such use was extensive as the Court has held that jurisdiction does not depend upon such use.

6. The United States Mail is delivered and collected once a day six days a week over the full length of the toll road to the Post Office on Fort George Island, delivering and callecting letter mail and parcels to and from persons residing along the line of the road. This mail service includes the settlements of New Berlin and Dame's Point, Florida. The United States census shows population figures as follows:

	1930	1940
Fort George Island	76	98
New Berlin Township (including settlement at Dame's Point)	228	584

7. Bayshore Water & Light Company, a corporation, is a subsidiary of The North Shore Corporation, and is owned and controlled by the same interests. Bay shore Water & Light Company owns and controls a telephone line connecting with the Southern Bell Telephone & Telegraph Company at Jacksonville, Florida, over which the residents and visitors of Fort George Island and its environs served by the toll road, make and receive long distance calls to and from all parts of the United States, for hire, which telephone line, until March 31, 1942, was operated and maintained by the plaintiffs and other employees of The North Shore Corporation. The telephone line is a public service, and is used by the public at large for a toll charge. It is also used by the Western Union Telegraph Company and the Postal Telegraph Company, to render telegraphic service to those residing on Fort George Island and its environs. So far as concerns all plaintiffs in this case rendering service to Bay Shore Water & Light Company, up to and including March 31, 1942, their wages were paid solely by defendant.

8. Throughout the period from the effective date of the Fair Labor Standards Act (October 24, 1938) to the present time, the toll road has been continually used by automobiles bearing license tags from states other than the State of Florida. Except during a limited period during the year 1942, no accurate record was kept by anyone showing the proportion of total automobile traffic on said road represented by cars bearing foreign licenses. Estimates of witnesses range from a maximum of 33⅓% (according to certain of plaintiff's witnesses) to a minimum

of 5% (according to certain of defendant's witnesses). No record has been kept showing what proportion of the cars bearing foreign license tags were actually travelling in interstate commerce.

9. Throughout the period from the effective date of the Fair Labor Standards Act (October 24, 1938) to the present time there has been a flow of interstate commerce over defendant's toll road the amount of which is not mathematically ascertainable from the evidence herein, either in percentage of total traffic or otherwise; but even disregarding such evidence adduced by plaintiff's witnesses, according to defendant's own witnesses, such flow of commerce has been sufficiently constant to be neither occasional nor accidental. Throughout said period, up to and including March 31, 1942, there has been a like flow of interstate telephone and telegraph messages over the telephone line of Bay Shore Water & Light Company.

10. All of the plaintiffs in case 393-J-Civil were employed by defendant at divers times since the effective date of the Fair Labor Standards Act. Their respective duties were as follows:

(a) *J. F. Booth:* Foreman of maintenance on toll road and bridges, and the telephone line of Bay Shore Water & Light Company, but not employed in an executive, administrative or professional capacity.

(b) *J. A. Lang, Isadore Barnett, Amos Harris, N. Lang, Jr.,* and *R. Brazle:* Laborers employed under the direction of the foreman to maintain and repair the toll road, bridges, and telephone lines.

(c) *M. E. Nowlin, N. W. Smith, R. S. Simmons, F. C. Smith, G. A. Pereira* and *L. L. Garvin:* Toll collectors

whose duty it was to sell tickets for vehicles using the toll road, and to collect such tickets; also to make telephone connections with Southern Bell Telephone & Telegraph Company for the transmission of telephone and telegraph messages over the line of Bay Shore Water & Light Company.

(d) *W. R. Stewart:* Toll collector with duties as stated for the employees listed in sub-paragraph (c) above. Sometimes after the termination of Stewart's services as toll collector he was re-employed by defendant as maintenance foreman with duties similar to those stated for plaintiff Booth in sub-paragraph (a) above, except that Stewart had nothing to do with the repair or maintenance of the telephone line.

(e) *H. T. Overstreet:* Bridge tender whose duty it was to raise and lower the drawbridge over Sisters Creek. After termination of Overstreet's services he was succeeded in that position by plaintiff M. E. Nowlin, following the services which Nowlin rendered as toll collector described in sub-paragraph (c) above. The claims of Overstreet and Nowlin as bridge tender have been settled in full, with the exception of attorneys' fees, as hereinafter referred to. Therefore further description of their duties as bridge tender, or statement of their periods of service, hours of work, and rates of pay as such, is unnecessary.

11. All of the plaintiffs in case 588-J-Civil were employed by defendant at divers times since the effective date of the Fair Labor Standards Act, as toll collectors, with duties as set forth in finding 10 (c) above.

12. The respective services of the plaintiffs in each of the cases above named were necessary to the maintenance

and use of the toll road and telephone lines in interstate commerce.

13. With respect to each of the plaintiffs in case 393-J-Civil, defendant has failed to pay to them the amounts of money to which they were entitled under the Fair Labor Standards Act, for minimum wages and for overtime, either or both, with a resulting penalty to defendant of 100% of the amount of such deficiency. The amounts found due the several plaintiffs in said case, including the penalty aforesaid, but exclusive of attorneys' fees, are as follows:

Isadore Barnett	$ 321.74
J. F. Booth	669.44
R. Brazle	218.56
L. L. Garvin	2,688.14
Amos Harris	451.91
J. A. Lang	430.97
N. Lang, Jr.	412.17
M. E. Nowlin	261.56
G. A. Pereira	2,384.92
R. L. Simmons	2,497.63
N. W. Smith	5,146.07
Frank Smith	2,944.72
W. R. Stewart	1,021.95

14. With respect to each of the plaintiffs in case 588-J-Civil, defendant has failed to pay to them the amounts of money to which they are entitled under the Fair Labor Standards Act for minimum wages and for overtime, either or both, with a resulting penalty to the defendant of 100% of the amount of such deficiency. The amounts found to be due the several plaintiffs in said case including the penalty aforesaid, but exclusive of attorneys' fees, are as follows:

Ruben Knox	$1,160.38
William J. Scott	544.44
W. M. Young	474.64

15. In addition to the amounts found due the several plaintiffs in case 393-J-Civil in finding #13 above, the following are reasonable amounts to be allowed for the services of plaintiffs' attorneys herein rendered.

(a) For services in prosecuting the claims of plaintiffs H. T. Overstreet and M. E. Nowlin as bridge tenders of Sisters Creek drawbridge to final conclusion, as represented by stipulation of said plaintiffs with defendant, approved by order of Court entered April 1, 1943 (after rendition of the decision of the United States Supreme Court in this case), and resulting in the payment of the following sums to said plaintiffs in satisfaction of such claims: To H. T. Overstreet $338.95; to M. E. Nowlin $2632.34—a total attorneys' fee of $1000.00. Against that allowance should be credited $500 paid by defendant upon the approval of said stipulation, leaving a net attorneys' fee for the services stated in this paragraph of $500.00.

(b) For all other services rendered by plaintiffs' attorneys in this case, including services rendered to plaintiff Nowlin with regard to his services with defendant other than as bridge tender, $1000.00.

16. In addition to the amounts found due the several plaintiffs in case 588-J-Civil in finding #14 above, a reasonable amount to be allowed as attorneys' fee in that case would be the sum of $210.00.

Conclusions of Law.

1. Each of the plaintiffs in case 393-J-Civil was engaged in commerce all during their several periods of employ-

ment by defendant, is within the coverage of the Fair Labor Standards Act, and is entitled to recover from the defendant The North Shore Corporation the several sums of money found to be due them under finding #13 above, together with an additional amount as attorneys' fee as stated in finding #15 above.

2. Each of the plaintiffs in case 588-J-Civil was engaged in commerce all during the several periods of employment by defendant, are within the coverage of the Fair Labor Standards Act, and are entitled to recover from the defendant The North Shore Corporation the several sums of money found to be due them under finding #14 above, together with an additional amount as attorneys' fees as stated in finding #16 above.

Dated at Orlando, Florida, this 28th day of September, A. D. 1943.

DOZIER A. DEVANE,
Judge.

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413 FINAL JUDGMENT.

United States District Court, Southern District of Florida.

H. T. Overstreet, et al., Plaintiffs,
vs. Case 393-J-Civil.
The North Shore Corporation, a Corporation, Defendant.

This Cause was tried at Jacksonville, Florida, on June 23-25, inclusive, 1943, before a Judge without a jury; and the Court having duly made and entered its findings of fact and conclusions of law, it is hereby

Ordered and Adjudged as follows:

1. That the plaintiffs in said cause do severally recover of and from the defendant The North Shore Corporation, a corporation, the following sums of money:

Isadore Barnett	$ 321.74
J. F. Booth	669.44
R. Brazle	218.56
L. L. Garvin	2,688.14
Amos Harris	451.91
J. A. Lang	430.97
N. Lang, Jr.	412.17
M. F. Nowlin	261.56
G. A. Pereira	2,384.92
R. L. Simmons	2,497.63
N. W. Smith	5,146.07
Frank Smith	2,944.72
W. R. Stewart	1,021.95

2. That in addition to the sums hereinabove stated, plaintiffs shall recover from defendant attorneys' fees as follows:

(a) For services in prosecuting to final conclusion the claims of H. T. Overstreet and M. E. Nowlin as bridge tender at Sisters Creek drawbridge, resulting in the payment of the claims of said plaintiffs as bridge tender, a total attorneys' fee of $1000.00, less a credit of $500 heretofore paid by defendant, leaving a balance due for such attorneys' fees of $500.

(b) For all other services rendered by plaintiffs' attorneys in this case, including services rendered to plaintiff M. E. Nowlin with regard to his employment by defendant other than as bridge tender, the sum of $1000.

3. That the costs of this case, including a fee of $662.50 allowed to the auditor appointed by the Court to state an

accounting, shall be taxed by the Clerk of this Court against the defendant.

4. For all of the sums hereinabove stated let execution issue.

Done and Ordered in Chambers at Orlando, Florida, this 28th day of September, A. D. 1943.

DOZIER A. DEVANE,
District Judge.

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415 NOTICE OF APPEAL.

United States District Court, Southern District of Florida.

H. T. Overstreet, et al., Plaintiffs,
vs. Case 393-J-Civil.
The North Shore Corporation, a Corporation, Defendant.

Notice is hereby given that The North Shore Corporation, the defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the Final Judgment entered in this action on the 28th day of September, 1943, whereby each of the plaintiffs named in said judgment recovered sums certain of and from this defendant, this appeal being taken from each and every part of said judgment, save and except the portion of paragraph 2 thereof, designated as (a), determining the amount of attorneys' fees on the settled portions of the action involving the claims of H. T. Overstreet and M. E. Nowlin. The parties appellee hereto are the plaintiffs, Isadore Barnett, J. F. Booth, R. Brazle, L. L. Garvin, Amos Harris, J. A. Lang, N. Lang, Jr., M. E. Nowlin, G. A. Pereira, R. L. Simmons, N. W. Smith, Frank Smith, and W. R. Stewart.

Dated at Jacksonville, Florida, this 6th day of October, 1943.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

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416 ORDER.

(Title Omitted.)

This Cause came on to be heard before the Court upon the Motion of the Defendant for Supersedeas and a Supersedeas Bond complying with Rule 73 (d) of the Rules of Federal Civil Procedure having been filed and approved by the Court, and the Court being fully advised in the premises, it is

Ordered and Adjudged that the Appeal of the Defendant, The North Shore Corporation, a corporation, be allowed with Supersedeas, and all further proceedings upon the portions of Final Judgment from which the Appeal is taken and all process to enforce the same be, and they are, hereby, severally, stayed and suspended until said appeal shall have been heard and determined.

Done and Ordered this 6th day of October, A. D. 1943.

DOZIER A. DeVANE
United States District Judge,
Southern District of Florida.

417 DEFENDANT'S STATEMENT OF POINTS ON WHICH IT INTENDS TO RELY ON APPEAL.

(Title Omitted.)

In compliance with Rule 75 (d) of the Rules of Federal Procedure for the District Courts of the United States, the defendant, The North Shore Corporation, hereby states that upon its appeal entered herein October 6th, 1943, it intends to rely upon the following points:

1. Defendant will contend that the Court erred in holding that the complaint and evidence taken thereunder exhibited a claim against this defendant upon which relief could be granted.

2. Defendant will contend that the plaintiffs failed to prove that they, severally, were engaged in commerce during a substantial portion of the several periods of their several employments and therefore, that the Court erred in holding that they, severally, could recover.

3. Defendant will contend that the plaintiffs failed to prove that there was an extensive amount of interstate commerce over the defendant's highway and therefore, that the Court erred in holding that they, severally, could recover.

4. Defendant will contend that the plaintiffs failed to prove that there was a substantial amount of interstate commerce over the defendant's highway and therefore, that the Court erred in holding that they, severally, could recover.

5. Defendant will contend that the Court erred in holding that it was not a defense to this action that at none of

the times mentioned in the complaint was there any substantial amount of interstate commerce conducted on or over the toll road owned by the defendant, work on or in connection with which was done by the plaintiff employees herein.

6. Defendant will contend that the Court erred in not holding that the plaintiffs who made telephone connections with Southern Bell Telephone & Telegraph Company for the transmission of telephone and telegraph messages over the line of Bayshore Water & Light Company were, in such work, exempt from the application of the Fair Labor Standards Act under Section 13 (a) (11) thereof.

7. Defendant will contend that the Court erred in holding that it was no defense to this action that at none of the times mentioned in the complaint was there any substantial part of the activities of the plaintiffs or any of them relating to commerce from points outside the State of Florida to points inside the boundaries thereof, or from points inside the boundaries thereof to points outside the State of Florida.

8. Defendant will contend that the Court erred in holding that the plaintiff, J. F. Booth, was not employed as an executive or administrative official of the defendant, and as such exempt from the Fair Labor Standards Act under Section 13 (a) (1).

9. Defendant will contend that the Court erred in holding that the plaintiff, W. R. Stewart, was not employed as an executive or administrative official of the defendant and as such exempt from the Fair Labor Standards Act under Section 13 (a) (1).

10. Defendant will contend that the Court erred in denying and overruling the plaintiffs' Motion to Strike out

from the stipulation between the parties entitled "Stipulation No. 1 as to Facts" all the evidence thereto attached concerning the foreign license traffic over the toll road and in, thereby, ruling that the mere fact that a car bearing a foreign license may have proceeded over the toll road was evidence that interstate commerce was being conducted over the toll road.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

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420 STIPULATION DESIGNATING THE CONTENTS OF RECORD ON APPEAL.

(Title Omitted.)

It is Stipulated and Agreed by and between counsel for the respective parties hereto that the portions of the record hereinafter designated shall constitute the record on the appeal entered herein by The North Shore Corporation under date of October 6, 1943.

The Clerk will please include the following:

1. The Second Amended Complaint filed herein June 3, 1943.

2. The Answer of The North Shore Corporation filed herein June 15, 1943, omitting the exhibits thereto.

3. The stipulation entitled "Stipulation No. 1 as to Facts" filed herein June 23, 1943, and the exhibits thereto except Exhibit "A."

4. All of the testimony and proceedings at the trial exhibited by the Court Reporter's Transcript bearing upon the matters at issue, exclusive of the testimony relating solely to the hours of labor and rates of pay and the calculation of the Compensation due to the several parties plaintiff. It is stipulated and agreed that only the following designated portions of the Court Reporter's Transcript bear upon such issues and the Clerk shall include only the following portions of said Court Reporter's Transcript:

(1) Title pages 1 and 2.

(2) On page 3, lines 1 to 11, inclusive.

(3) On page 13, lines 1 to 10, inclusive.

(4) The last nine lines on page 27.

(5) Page 28.

(6) On page 29, lines 1, 2 and 3.

(7) On page 37, the last eight lines, omitting the language "Yes, sir, in his case. That is all we can stipulate on, but . . .".

(8) Page 38.

(9) On page 40, line 14, beginning with the word "in", lines 15 and 16 and the last four lines.

(10) Pages 41 to 44, inclusive.

(11) On page 45, lines 1 to 16.

(12) On page 52, the last six lines.

(13) Page 53.

(14) Page 54, copying plaintiffs' Exhibit No. 2 after line 18 on said page and before line 19 thereon.

(15) Pages 55 to 64, both inclusive.

(16) On page 65, lines 1 to 17.

(17) Page 66.

(18) On page 67, lines 2 to 10.

(19) Pages 68 and 69.

(20) On page 70, lines 1 to 14.

(20a) On page 75, lines 7 to 9.

(21) On page 76, copy lines 1 to 5, omit lines 6 to 8, and copy the rest of the page.

(22) Pages 77 to 80, inclusive.

(23) On page 81, lines 1 to 4.

(24) On page 83, the last fifteen lines.

(25) Pages 84 to 91, inclusive.

(26) Page 92, except last five lines.

(27) On page 93, the last two lines.

(28) Pages 94 and 95.

(29) Page 96, except last two lines.

(30) Page 97, except first two lines and except last two lines.

(31) Page 101.

(32) Pages 102 to 108, inclusive.

(33) Page 109, except last five lines.

(34) On page 112, the last three lines.

(35) Pages 113 to 123, inclusive.

(36) Page 124, except last ten lines.

(37) On page 125, the last twelve lines.

(38) Pages 126 to 142, inclusive.

(39) Page 143, except lines 14 to 22.

(40) Pages 144 to 150, inclusive.

(41) On page 151, lines 1 to 14.

(42) Pages 152 to 164, inclusive.

(43) Page 165, except last seven lines.

(44) On page 166, lines 2 to 5.

(45) Pages 170 to 180, inclusive.

(46) On page 181, lines 1 to 8.

(47) On page 182, last ten lines.

(48) Pages 183 to 200, inclusive.

(49) Page 203, except lines 1 and 2.

(50) Pages 204 and 205.

(51) On page 206, the first eleven lines.

(52) On page 214, the last eleven lines.

(53) Pages 215 to 220, inclusive.

(54) On page 223, lines 4 to 11, and the last twelve lines.

(55) Pages 224 and 225.

(56) On page 228, the last six lines.

(57) On page 229, the first twelve lines and the last four lines.

(58) Page 230, except the last nine lines.

(59) Page 232, except the first four lines.

(60) Page 233, except the last four lines.

(61) On page 235, the last eight lines.

(62) On page 236, the first 11 lines.

(63) Page 241, except the first four lines.

(64) On page 242, the first line.

(65) Page 243, except lines 1 to 12.

(66) Pages 244 to 249, inclusive.

(67) On page 250, the first three lines.

(68) Page 251, except lines 1 to 4.

(69) Page 252, except lines 18 to 22.

(70) Pages 253 and 254.

(71) On page 255, lines 1 and 2.

(72) Page 256, except lines 1 to 12.

(73) Page 257.

(74) On page 258, the first four lines and the last line.

(75) On page 259, lines 1 to 18.

(76) On page 260, the last ten lines.

(77) Pages 261 to 264, inclusive.

(78) On page 265, lines 1 to 13.

(79) On page 266, the last eleven lines.

(80) Pages 267 to 270, inclusive.

(81) Page 271, except last 7 lines.

(82) On page 280, the last nine lines.

(83) Page 281.

(84) Page 282, the first three lines and line 13.

(85) Page 288, except lines 1 to 5.

(86) Page 289, except lines 1 to 5.

(87) Pages 290 and 291.

(88) Page 293, except lines 1 to 15.

(89) Page 294.

(90) On page 295, lines 3 to 7, and from line 13 to the end of the page.

(91) Pages 296 to 338, inclusive.

(92) On page 339, lines 1 to 7, and the last five lines.

(93) Pages 340 to 359, inclusive.

(94) On page 360, lines 1 to 4.

(95) Page 361, except lines 1 to 6.

(96) On page 362, lines 1 to 10, and line 15, commencing with the word "now" to the end of the page.

(97) Pages 363 to 368, inclusive.

(98) Page 369, lines 1 and 2, and line 14 to the end of the page.

(99) Page 370.

(100) On page 371, lines 1 to 15.

(101) Page 372, except the first line.

(102) Page 373.

(103) Page 374, except the last seven lines.

(104) On page 375, the last two lines.

(105) Pages 376 to 382, inclusive.

(106) Page 383, except the last six lines.

(107) Page 384, except the first four lines.

(108) Pages 385 to 396, inclusive.

(109) Page 397, except lines 18 to 23.

(110) Pages 398 to 404, inclusive.

(111) Page 407, except first six lines.

(112) Pages 408 to 412, inclusive.

(113) On page 413, lines 1 to 14.

(114) On page 461, lines 6 and 7, and the last line.

5. The Opinion of Court, Findings of Fact and Conclusions of Law, filed herein September 29, 1943.

6. The Final Judgment entered herein September 29, 1943.

7. The Notice of Appeal filed herein October 6, 1943.

8. The Order Allowing Appeal, with Supersedeas, filed herein October 6, 1943.

9. The Defendant's Statement of Points on Which It Intends to Rely on Appeal filed herein simultaneously with the filing of this Stipulation.

10. This Stipulation Designating the Contents of Record on Appeal.

The parties hereto further stipulate and agree that Exhibit "A" to the Stipulation entitled "Stipulation No. 1 as to Facts", plaintiffs' evidentiary Exhibits 3, 4, 5 and 6, and Defendant's evidentiary Exhibits 1, 2, 3 and 4 should be sent to the Appellate Court in lieu of copies and that the District Court may, by order, in accordance with Rule 75(i), order same transmitted to the Appellate Court.

The parties stipulate and agree that, with said exhibits, the record herein will contain every material factor to be considered by the Appellate Court to enable it to determine the points set out in the Defendant's Statement of Points on Which it Intends to Rely on Appeal, paper No. 9 above listed.

Stipulated and agreed at Jacksonville, Florida, this 19th day of October, A. D. 1943.

DILLON HARTRIDGE,
LUCIEN H. BOGGS,
Attorneys for Plaintiffs.

Whose address is:
1001 Bisbee Building,
Jacksonville 2, Florida.

SMITH & AXTELL,
Attorneys for Defendant,
W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville 2, Florida.

426 ORDER FOR TRANSMISSION OF EXHIBITS.

(Title Omitted.)

This Cause coming on this day to be heard on the application of the Defendant for an Order for the transmission of the exhibits hereinafter mentioned to the Circuit Court of Appeals for the Fifth Circuit, in lieu of copies, the application being made under the terms of Rule 75(i) of the Rules of Federal Civil Procedure for the District Courts of the United States, and the Stipulation between the parties contained in the Stipulation Designating the Contents of Record on Appeal having been called to the attention of the Court, and the Court being of the opinion that the said original papers or exhibits hereinafter mentioned should be inspected by the Appellate Court or sent to the Appellate Court in lieu of copies, it is, thereupon,

Ordered and Adjudged that Exhibit "A" to the Stipulation entitled "Stipulation No. 1 as to Facts", and plaintiffs' evidentiary Exhibits 3, 4, 5 and 6, and defendant's evidentiary Exhibits 1, 2, 3 and 4, shall be transmitted to the United States Circuit Court of Appeals for the Fifth Circuit, along with the record on said appeal, by the Clerk of this Court. In transmitting same, the Clerk shall exact of the defendant the cost of transmission and return of said exhibits and shall make and forward his certificate as to the authenticity of said exhibits. The Clerk is further directed to make appropriate arrangements with the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit for the return of said exhibits when they have served their purpose in connection with the appellate proceedings.

Done and Ordered at Jacksonville, Florida, this 23rd day of October, A. D. 1943.

(S.) DOZIER A. DeVANE,
United States District Judge.

428 AMENDMENT TO STIPULATION DESIGNATING THE CONTENTS OF RECORD ON APPEAL.

(Title Omitted.)

By way of amendment to the stipulation designating the contents of the record on appeal, heretofore filed in this cause, it is stipulated and agreed by and between counsel for the respective parties hereto that, in addition to all other portions of the record designated in the previous stipulation to be included in the record on appeal, the Clerk will also include the following items:

11. Order for Transmission of Exhibits entered herein October 23, 1943.

12. This Amendment to Stipulation Designating the Contents of Record on Appeal.

Stipulated and agreed at Jacksonville, Florida, this 27th day of October, A. D. 1943.

DILLON HARTRIDGE,
LUCIEN H. BOGGS,
Attorneys for Plaintiffs.

Whose address is:
1001 Bisbee Building,
Jacksonville, Florida.

SMITH & AXTELL,
Attorneys for Defendant,
By W. GREGORY SMITH,
Of Counsel.

Whose address is:
603 Bisbee Building,
Jacksonville, Florida.

United States of America,
Southern District of Florida, ss.

I, EDWIN R. WILLIAMS, Clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 428, inclusive, contain a true copy of all such papers and proceedings in the cause of The North Shore Corporation, Appellant, vs. Isadore Barnett, et al, Appellee, as appear upon the records and files of my office that have been directed to be included in said transcript by the agreement of the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Jacksonville, Florida, on this the 13th day of November, A. D. 1943.

EDWIN R. WILLIAMS,
(Seal) (Edwin R. Williams),
Clerk, U. S. District Court,
Southern District of Florida.

[fol. 351] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of May 3rd, 1944

No. 10881

NORTH SHORE CORPORATION

versus

ISADORE BARNETT, et al.

On this day this cause was called, and, after argument by W. Gregory Smith, Esq., for appellant, and Lucien H. Boggs, Esq., for appellees, was submitted to the Court.

[fol. 352] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed June 9, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10881

NORTH SHORE CORPORATION, Appellant,

versus

ISADORE BARNETT, et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(June 9, 1944)

Before Sibley, McCord, and Lee, Circuit Judges

LEE, Circuit Judge:

Appellees, employees of appellant, brought this action under Section 16(b) of the Fair Labor Standards Act of 1938, to recover alleged unpaid minimum wages and overtime pursuant to Sections 6 and 7 of the Act. A motion to

dismiss was granted as to certain of the employees.[1] This Court affirmed.[2] The Supreme Court reversed and re- [fol. 353] manded the case for further proceedings. 318 U. S. 125. The case was thereupon tried to the Court without a jury and resulted in a judgment awarding to each appellee specific unpaid wages, overtime compensation, penalties, and attorney's fees. This appeal presents the question whether appellees, as held by the Court below, were covered by the Act; and, if so, whether some of the employees were exempt under Section 13(a)(11), which exempts "any switchboard operator employed in a public telephone exchange which has less than five hundred stations."

Appellant is a Florida corporation which owns and operates a toll road in the State of Florida, connecting with U. S. Highway No. 17, a national arterial highway, a short distance north of the limits of the city of Jacksonville, Florida. The toll road extends from the national highway in an easterly direction to a point near the western shore of Fort George Inlet. It connects with a county road serving Fort George Island and affords the only means of communication by land between Fort George Island and the outside world. It crosses by means of drawbridges three navigable streams, Cedar Creek, Clapboard Creek, and Sisters' Creek. It was built and opened for transportation in 1928. Tolls are collected by authority of Acts of the Florida Legislature, by which it is required that the road "be open for traffic at any and all times and maintained in a condition safe and suitable for travel * * *."

A wholly owned subsidiary of the appellant, namely, Bayshore Water & Light Company, owns and operates a telephone line which parallels the toll road, serves the same territory, and connects with the Southern Bell Telephone & Telegraph Company, a national telephone system, in Jacksonville.

[fol. 354] The Court below found that while the amount of interstate commerce over the toll road "is not mathematically ascertainable from the evidence * * *, either in

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[1] Overstreet v. North Shore Corporation, 43 F. Supp. 445.

[2] Overstreet v. North Shore Corporation, 128 F. 2d 450.

percentage of total traffic or otherwise, * * * according to defendant's [appellant's] own witnesses, such flow of commerce has been sufficiently constant to be neither occasional nor accidental."[3] The Court below also found that "throughout said period up to and including March 31, 1942, there has been a like flow of interstate telephone and telegraph messages over the telephone line * * *." The evidence fully supports these findings.

Some of the appellees were engaged in the repair and maintenance of the toll road and bridges and the telephone line; others served as toll collectors, selling and collecting tickets issued for vehicles using the road. These toll collectors also made telephone connections for transmission of telephone and telegraph messages over the telephone line.

The Supreme Court in *Overstreet v. North Shore Corporation,* 318 U. S. 125, 132, speaking of the toll road said:

> "Petitioners, who are engaged in operating and maintaining respondent's facilities so that there may be interstate passage of persons and goods over them, are so closely related to that interstate movement as a practical matter that we think they must be regarded, under the allegations of their complaint, as 'engaged in commerce' within the meaning of Sections 6 and 7 of the Act."

The three appellants in that case were serving as a bridge tender, a toll collector, and a maintenance laborer, respectively.

[fol. 355] Appellant contends that such holding must be interpreted in the light of the allegations of the complaint, necessarily admitted for the purpose of the motion to dismiss, in which the interstate use of the toll road and bridges was alleged to be extensive. We do not find, however, that the Court rested its holding upon the alleged extensive use; we think a careful reading of the opinion justifies the view that the holding is based upon

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[3] Appellant's witnesses testified that from five to eight per cent of the cars on the toll road bear foreign licenses. Appellees' witnesses placed the percentage from twenty to thirty-three and one-third per cent.

the fact of interstate use rather than upon the extent of such use.[4]

Appellant further contends that the toll road and bridges are not instrumentalities of interstate commerce because the evidence established that only a small portion of the traffic over them was interstate in character. Appellant relies strongly on *Walling v. Jacksonville Paper Co.*, 317 U. S. 564, 572, holding that "If a substantial part of an employee's activities related to goods whose movement in the channels of interstate commerce was established by the test we have described, he is covered by the Act," and upon cases holding that an employee is not within the coverage of the Act when his duties of an interstate character are so insignificant as to be within the principle of *de minimis non curat lex.*

The law as laid down in *Walling v. Jacksonville Paper Co., supra,* is applicable to that class of cases which deals with employees whose duties relate in part to interstate [fol. 356] shipments. It is not applicable to that class of cases which deals with employees having to do with maintenance or operation of instrumentalities of commerce.

Employees in the first class engaged during the same work-week in activities strictly interstate in character and in activities strictly intrastate in character. Employees in the second class of cases, as here, engaged in the same type of activities throughout each work-week. In the case before us the appellees are not concerned with goods or

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[4] In McCleod v. Threlkeld, 319 U. S. 491, 494, it is indicated that the rationale of the holding in the Overstreet case that the employees in that case were "engaged in commerce" was the fact that they were engaged in operating and maintaining toll roads and bridges over navigable waters and selling and collecting tickets for vehicles using the road. Mr. Justice Reed, as the organ of the Court, citing the Overstreet case, said: "Employees engaged in operating and maintaining privately owned toll roads and bridges over navigable waters are 'engaged in commerce.'"

Mr. Justice Murphy dissenting in the McCleod case, in referring to the Overstreet case in which he was the organ of the Court, said: "We have held that * * * a seller of tickets on a toll bridge over which interstate traffic moves * * * [is] 'engaged in commerce' within the meaning of the Fair Labor Standards Act."

persons moving between two or more states by means of instrumentalities of interstate and intrastate transportation. They are concerned (1) in maintaining an instrumentality of transportation over which goods and persons in interstate and intrastate movements alike are being transported, and (2) in maintaining and operating an instrumentality of communication over which messages and telegrams in interstate and intrastate transactions alike are being transmitted.

> "A track or bridge may be used in both interstate and intrastate commerce, but when it is so used it is none the less an instrumentality of the former; nor does its double use prevent the employment of those who are engaged in its repair or in keeping it in suitable condition for use from being in interstate commerce." *Pederson v. Delaware, Lack. & West. R. R. Co.*, 229 U. S. 152.

See also *Miller v. Central R. Co. of N. Y.*, 58 F. 2d 625.

The toll road and the telephone line are links in national transportation and communication systems. They are open and available at all times for interstate use. If the application of the Fair Labor Standards Act to employees engaged in maintaining the one and in maintaining and operating the other depends on the extent of the [fol. 357] use of each in interstate commerce, then such use would make coverage often depend on adventitious and remote factors, at times even the weather. If coverage depends on the amount and character of traffic handled, which may fluctuate or alter from week to week, then employees engaged in maintaining the toll road and in maintaining and operating the telephone line may be under the Act one week and not under the Act the next. Such construction would to a certain degree render the Act nugatory.

In *The Daniel Ball*, 77 U. S. 557, 565, 10 Wall. 557, 19 L. D. 999, the Supreme Court said:

> "• • • So far as she [The Daniel Ball] was employed in transporting goods destined for other states, or goods brought from without the limits of Michigan and destined to places within that State, she was engaged in commerce between the states, *and however limited that commerce may have been*, she was, *so far as it went*, subject to the legislation

of Congress. *She was employed as an instrument of that commerce;* for whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one state and some acting through two or more states, does in no way affect the character of the transaction. *To the extent in which each agency acts in that transportation, it is subject to the regulation of Congress.*"

In *Schmidt v. Peoples Telephone and Maryville, Mo.*, 138 F. 2d 13, 15, in which the trial Court had referred to the number of interstate telephone messages as "trifling," the Eight Circuit Court said:

> [fol. 358] "The test here is not the amount of revenue derived by the employer from interstate calls *nor the number of such calls in interstate commerce.* We are not dealing with a situation where some inconsequential incident of interstate commerce happens to result from the general conduct of a fundamentally intrastate business. *Here, the employer offered a continuous service to and from six towns in a state other than the state wherein its exchange was located.* The employer admittedly was immediately and directly engaged in interstate commerce and held itself out as furnishing interstate communication service both to its subscribers and to the general public. The nature of the employer's business here was such, by virtue of its being engaged directly and immediately in interstate commerce, that employees, whose duty it was to handle such interstate communications, were clearly within the express language used by Congress in the Act and are covered, unless there is some exemption therefor."[5]

The Act exempts telephone and switchboard operators of a particular class. It does not exempt toll collectors and ticket sellers who may also operate a switchboard along with their other duties. The time spent by the toll

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[5] See also National Labor Relations Board v. J. G. Boswell Co., 136 F. 2d 585, 589.

collectors and ticket sellers in exempt activity and in non-exempt activity cannot be segregated. Such employees obviously are not within the Act's exemption.

The Act is remedial. Under the facts, the Act is clearly applicable.

The judgment appealed from is correct and it is accordingly

Affirmed.

[fol. 359] SIBLEY, Circuit Judge Dissenting:

The judgment about to be affirmed awards each employee of the toll road minimum wages, overtime pay, and penalties for every work-week since the Fair Labor Standards Act went into effect, although there is no finding of fact that in all work-weeks or in any one of them a substantial amount of interstate commerce was done in which any employee could have been engaged. The theory advanced is that because the road was open for general commerce it became an "instrumentality of interstate commerce" so soon as any interstate commerce was done and continued to be such so long as it was kept open, so that everyone employed about it was at all times "engaged in interstate commerce". The district judge and the majority of this court seem to think this is required by the opinion of the Supreme Court in *Overstreet vs. North Shore Corporation*, 318 U. S. 125. The district judge said: "The Supreme Court in its decision has left little for the trial court to do other than determine the amounts the several plaintiffs are entitled to recover. * * * As I construe the opinion the Supreme Court held in this case that the employees engaged in operating and maintaining a privately owned toll road, and bridge over navigable waters, are engaged in commerce, and are subject to the Fair Labor Standards Act, and that their status under the Act is not dependent upon whether the amount of interstate traffic is substantial, more or less." Though deeming it unimportant, he found as facts that the "overwhelming majority of the automobiles * * * bore Florida license plates"; that every merchant having a place of business on the road had testified and only one had received interstate shipments and he only three of them; and the "total of interstate shipments did not exceed 14 in the period from 1938 to 1942 inclusive." He refused to find that the use of the road for interstate commerce had

been "extensive" or "substantial", but thought it enough that it was open to such use and was so used. The majority [fol. 360] opinion also says: "We think a careful reading of the opinion (in the *Overstreet* case) justifies the view that the holding is based upon the fact of interstate use rather than the extent of such use."

This, I think, is a serious misunderstanding of the *Overstreet* decision. The sole contention there was that the employer was not the carrier of interstate commerce, and therefore, as the court states it, "their (the employees') activities are local and at most only affect commerce." 318 U. S. 128. There was no question as to the amount of interstate commerce done, for the petition, the court says, alleged: "The toll road constitutes an integral part of the highway system of the United States. • • • It is used extensively by persons and vehicles traveling between the island and points outside the State of Florida in interstate commerce. Mail to and from other States as well as goods produced outside Florida and consigned to merchants on the island are transported over the road. • • • We think these allegations bring petitioners within the coverage of the Act and entitle them to recover *if proved.*" The Court then settled the contention made, assuming "extensive" interstate transportation actually done, and held the work of the employees was close enough to that transportation to be practically a part of it. It certainly did not say how much of a mixed employment must be in interstate commerce as compared with what is intrastate, in order to apply the Act; which is the present question.

If the road had been used for interstate traffic only, the rule here acted on would be correct; its employees would be engaged in such commerce all the time, whether it were great or small. But this is not an interstate road. It is not "an integral part of the highway system of the United States" and never will be. It is a dead-end country road along the north shore of the St. John's River to Pilottown [fol. 361] at its mouth where some river pilots live, being the village postoffice called Fort George. The population is less than 100. There is little reason for or likelihood of any interstate traffic. As has been stated, the district court found that such traffic in goods was almost nil; and the overwhelming part of the passing vehicles bore Florida license plates. There is dispute in the evidence as to how many bore foreign plates, but that a car bore a foreign

plate does not, as the witnesses all say, prove that it was on an interstate trip over this road; for all Florida is full of persons temporarily there with their cars, for war work, military service, or pleasure, using their cars with foreign plates every day. There is only a possibility that some of the foreign cars passing had come direct from another State. If any were going to the fishing camps testified about, it was only in the fishing season; and if any were going to the "exclusive clubs" on the Island, the out-of-State patrons were few and only during the winter season when the clubs were open. It is hard to imagine why any interstate traveller would wish to go to Pilottown, and none is definitely shown ever to have gone there. Mere sightseers would almost certainly be on intrastate trips out of Jacksonville. The mail did pass each way once a day except Sundays, in charge of an employee of the United States who paid no toll. This was not interstate commerce in a constitutional sense, but the exercise of a governmental function under the postoffice and postroads clause of the Constitution. There is no proof that any of the mail was interstate in fact, though witnesses say some probably was. The commerce done on the intercoastal canal, facilitated by the drawbridge, has been put out of the case by settling according to the Act with Overstreet and the other bridge-tenders. The maintenance men did no repairs (save one time) on the drawbridge as such, but worked only on the plank surfacing which was part of the toll road and did not facilitate the canal commerce.

[fol. 362] It is perfectly clear that both the toll-takers, who dealt directly with the traffic on the road, and the maintenance men who did not, but whose work was so near that traffic as to be practically a part of it, were engaged principally in intrastate commerce, with a small admixture of interstate commerce. Is that admixture, not exactly determined or determinable, sufficient to make these men "engaged in interstate commerce" under the Act? No one contends that an employee must be *wholly* so engaged. No one hitherto has contended that a very slight admixture of interstate commerce will suffice. The Act itself, in Section 13, 29 U. S. C. A. 213, excluded certain employments, as agriculture, catching fish, seamen, switchboard operator in a small telephone exchange, but did not say what proportion of the employee's time and effort must be given to the excluded activity to effect an exclusion. In only one

case was attention given to a possible mixed employment, in excluding "any employee engaged in any retail or service establishment *the greater part* of whose service and selling is in intrastate commerce". Sect. 13(a)(2). *Preponderance* is here made the test as between service in interstate and in intrastate commerce. It is a logical and reasonable test, and would afford a fair test in all mixed employments. This court, however, in *Fleming, Admr. vs. Jacksonville Paper Co.*, 128 Fed. (2) 395, suggested that if "a substantial part" of the employee's mixed work was in interstate commerce it was enough. That language was repeated by the Supreme Court on review of the case, 317 U. S. 564. That may be said to be the judicial formula. After the decision of *Kirschbaum Co. vs. Walling*, 316 U. S. 517, which applied the Act to the maintenance employees of the owner of a building whose tenant was using it wholly for the production of goods for commerce, the Administrator was confronted with the case of a building only partly used for such production. He applied the judicial formula of "substantial part", and by a rule published Oct. 17, 1942, directed [fol. 363] that 20% should be considered substantial. When he had a case of mixed employment by trolley and bus carriers, exempt under Sect. 13(a)(9), he on March 6, 1944, applied the same ratio of 20%. We therefore have the legislative suggestion of preponderance, the judicial formula of substantial part, and the administrative crystallization of 20% to choose between. But no choice need be made, because the fact-findings are that the admixture of interstate commerce done was not "extensive", nor even "substantial", and certainly nowhere near 20%. The district judge called it a "flow", but the evidence shows it to be a mere trickle, and (except for the mail) seasonal and intermittent. None is proved with certainty.

The toll-takers have the larger recoveries, one for over $5,000, more than twice his agreed salary already paid. This is because their jobs were very light, an average of 125 cars passing in 24 hours, and the hours of service were long, causing much overtime. For not one of the work-weeks for which each claims and is awarded overtime pay and penalties is it proven that he in fact handled a single car travelling interstate, yet his right depends absolutely on his proving for each work-week that he was engaged in interstate commerce. All one can spell out of the evidence is that he might have been in some of the weeks so

engaged to a slight extent. It seems to me that his recovery has no certain basis other than that he saw the postman pass by every day.

The telephone line is a mere make-weight, not mentioned in the *Overstreet* case. It is a two-wire country line costing originally about $800, and intended for use about the toll road. Some stores and fishing camps were allowed to put in 'phones and the toll-takers made their connections. Some interstate communication occurred by connecting with the Jacksonville switchboard, but weeks and months passed [fol. 364] when there was none. The toll-takers as small switchboard operators were excluded under Sect. 13(a) (11), but no one contends that their telephone work was enough to exclude them altogether if they were otherwise engaged in interstate commerce. The road maintenance crew also kept up the telephone line, but work on it was occasional and insignificant. The line since 1942 has been operated by another company and its employees, and the line kept up by a single man. It adds nothing to this case.

The toll road also has now been turned over to the County, because unprofitable. The County employees are not under the Act. The former employees are out of a job. The policy and purpose of the Act as declared in Section 2, 29 U. S. C. A. §202, to improve wages without producing unemployment, has been frustrated. I think the decision is wrong in its philosophy and most unjust in its results.

[fol. 365] JUDGMENT

Extract from the Minutes of June 9th, 1944

No. 10881

NORTH SHORE CORPORATION

versus

ISADORE BARNETT, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said Dis-

trict Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, North Shore Corporation, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Sibley, Circuit Judge, dissents."

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[fols. 366-371] PETITION FOR REHEARING—Filed June 30, 1944

In the United States Circuit Court of Appeals

FOR THE FIFTH CIRCUIT

No. 10881

THE NORTH SHORE CORPORATION,

Appellant,

vs.

ISADORE BARNETT, *et al.*,

Appellees.

PETITION OF APPELLANT FOR REHEARING

Appellant, by its attorneys undersigned, respectfully petitions the court to grant a rehearing of this case upon the following several grounds:

I

The court's ultimate conclusion is reflected in the holding:

"The toll road and the telephone line are links in national transportation and communication systems. They are open and available at all times for interstate use. If the application of the Fair Labor Standards Act to employees engaged in maintaining the one and maintaining and operating the other depends on the extent of the use of each in interstate commerce, then such use would make coverage often depend on adventitious and remote factors, at times even the weather. If

> coverage depends on the amount and character of traffic handled, which may fluctuate or alter from week to week, then employees engaged in maintaining the toll road and in maintaining and operating the telephone line may be under the Act one week and not under the Act the next. Such construction would to a certain degree render the Act nugatory."

This holding destroys the standard of the single workweek established by the Fair Labor Standards Act and, in fact, establishes that an employee is subject to the terms of the Act and entitled to its benefits whenever, within the meaning of the Act, he is "engaged in" interstate commerce during some period of time, not established by the opinion, and not subject to be ascertained from the terms of the Act itself.

II

The opinion, in holding that the employees herein are covered by the Act under the facts and circumstances established by the record in this cause, overlooks and ignores the fact that the only obigation of the employer is, in a given workweek, to pay his employees "engaged in commerce" in accordance with the terms and provisions of Sections 6 and 7 of the Act.

III

The decision in this case constitutes judicial legislation in that it adds to the only legislatively fixed fields of coverage, namely: (1) "Engaged in Commerce" and (2) "Engaged in Production of goods for Commerce"; a third field, (3) "Engaged in the operation of an instrumentality of Commerce", in which the employee is to be deemed covered by the Act for long and undefined periods of time when, from the standpoint of interstate commerce, the instrumentality is not used at all.

IV

The decision in this case, in establishing by judicial legislation coverage of the Act wherever there is engagement in the operation of an instrumentality of commerce, opens a fertile field for litigation as to just what an instrumentality may be, ignoring and overlooking the fact that the Act is not made applicable to the operation of an instrumentality of commerce and that it does not define an "instrumentality". The opinion holds that a toll road is an instrumentality, although infrequently and not substantially used in interstate commerce. The opinion holds that a telephone line is an instrumentality. The decisions of this Court, in holding that there is no coverage of office building employees, indicate that an office building is not an instrumentality, although no one would take the position that an office building is not erected for the sole purpose of accommodating the transaction of commerce generally, and that, in any large city, inevitably offices in every office building will transact a large amount of interstate commerce. The judicial legislation enacted is, therefore, bad legislation in that it gives absolutely no guage by which the bar or the public can define the legislative term "instrumentality".

V

The opinion misconstrues the position of appellant, regarding the telephone line mentioned in the record, and treats the case as though the contention were made that, because the telephone line had fewer than 500 stations, its operators were excluded from the coverage of the Act, notwithstanding they may have otherwise been engaged in interstate commerce. This was not and is not the appellant's position. Appellant merely contended that since the telephone operators, as such, were not covered by the Act, their coverage depended on other engagement in commerce;

that their only other engagement in commerce was in the operation of the toll road; and that, therefore, whether they were engaged in commerce depended solely upon whether being a toll collector on the particular toll road involved constituted engagement in commerce. The opinion, therefore, indicates that Court overlooked and ignored the true position of appellant, so far as the telephone line was concerned.

VI

The opinion in this cause wholly overlooks and ignores the problems of statutory construction involved. Of necessity, if the decision is to be supported as other than judicial legislation, it must be supported as holding that the appellees were engaged in interstate commerce. Yet, the language of the Court in *Johnson vs. Dallas Downtown Development Company,* 132 F. (2d) 287, to-wit:

> "Clearly Congress intended the coverage of the Act to stop somewhere and the line bounding coverage must be drawn somewhere";

is overlooked and ignored and coverage of the Act is extended beyond any boundaries ever heretofore outlined and beyond what could possibly have been intended by the Congress, bearing in mind that Congress did not exercise in the Act the full scope of the commerce power and, in enacting the statute, plainly indicated its purpose to leave local business to the protection of the states, as was specifically held in *Kirschbaum Co. vs. Walling,* 316 U.S. 517, 522, and *Walling vs. Jacksonville Paper Company,* 317 U.S. 564, 570. There is a complete failure to meet or consider the facts in evidence which demonstrate how purely local is the operation of this dead end country toll road.

VII

The opinion in this case wholly overlooks and ignores the fact that the decisions cited in support of the main holding were under an act regulating actual navigation on navigable waters of the United States and under the National Labor Relations Act, respectively, and that this Court's decisions in *Johnson vs. Dallas Downtown Development Company*, supra, and *Johnson vs. Masonic Building Co.*, 138 F. (2d) 817, are much more nearly in point, both in fact and in law.

VIII

The Fair Labor Standards Act, as construed by this Court in its opinion of June 9th, 1944, as applied to the facts of this case, constitutes an unwarranted and unconstitional exercise of power under the commerce clause by the Congress, in that the Fair Labor Standards Act is herein construed as applicable to the conduct of a business, both by employer and employee, purely local in nature, not in or of itself constituting interstate commerce, nor affecting such commerce.

IX

The Fair Labor Standards Act, as construed by this Court in its opinion of June 9th, 1944, as applied to the facts of this case, constitutes the exercise of power by the Congress under the commerce clause in the realm of activities reserved to the states under the Constitution, in that it extends coverage of the Act to "work of the employees (which) has only the most tenuous relation to" commerce and only most tenuously affects commerce. *Kirschbaum Co. vs. Walling*, 316 U.S. 517, 525.

WHEREFORE, it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the District Court be reversed.

Respectfully submitted,

W. Gregory Smith,
Attorney for Appellant

CERTIFICATE OF COUNSEL

I, W. Gregory Smith, attorney for appellant in the above entitled case, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

W. Gregory Smith,

Copy of the foregoing Petition received:

Lucien H. Boggs,
Attorney for Appellees

[fol. 372] ORDER DENYING REHEARING

Extract from the Minutes of July 11th, 1944

No. 10881

NORTH SHORE CORPORATION

versus

ISADORE BARNETT, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, dissents."

[fol. 373] MOTION AND ORDER STAYING MANDATE—Filed July 19, 1944

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10881

THE NORTH SHORE CORPORATION, Appellant,

vs.

ISADORE BARNETT, et al., Appellees

MOTION FOR STAY OF MANDATE

The Appellant, The North Shore Corporation, a corporation, by its attorney undersigned, moves the court to stay its mandate, due to issue herein July 21st, 1944, for a period of 60 days from said date, in order to afford appellant time and opportunity to apply to the Supreme Court of the United States for a writ of Certiorari to review the decision of this court heretofore rendered in this cause, and for a stay thereafter until the Petition for Writ of Certiorari shall have been acted upon by said Supreme Court, and in support of this motion appellant shows unto the court that it intends to file with the Supreme Court of the United States its Petition for Certiorari to be directed to said judgment and that it has authorized its counsel to

proceed with such petition. Appellant further shows that supersedeas bond was made below and that appellees are amply protected.

(Signed) W. Gregory Smith, Attorney for Appellant.

Received a copy of the foregoing Motion and accept service of same this 14th day of July, A. D. 1944.

(Signed) Lucien H. Boggs, Attorney for Appellees.

[fol. 374] STATE OF FLORIDA,
County of Duval, ss:

Before me, the undersigned authority, personally appeared W. Gregory Smith, to me well known, who being by me first duly sworn, deposes and says: that he is the attorney for the appellant in the above styled cause; that he has read the above and foregoing Motion for Stay of Mandate and knows the contents thereof, and that the facts therein stated are true.

(Signed) W. Gregory Smith

Sworn to and subscribed before me this 14th day of July, A. D. 1944. (Signed) Mona Hogan, Notary Public, State of Florida at Large. My commission expires: Oct. 15, 1946. (Seal.)

[fol. 375] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10881

NORTH SHORE CORPORATION, Appellant,

versus

ISADORE BARNETT, et al., Appellees

On consideration of the application of the Appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Su-

preme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at Shreveport, La., this 18 day of July, 1944.

(Signed) Elmo P. Lee, United States Circuit Judge.

[fol. 376] Clerk's certificate to foregoing transcript omitted in printing.

Supreme Court of the United States

OCTOBER TERM, 1944

THE NORTH SHORE CORPORATION,
a corporation,

Petitioner,

vs.

ISADORE BARNETT, J. F. BOOTH, R. BRAZLE, L. L. GARVIN, AMOS HARRIS, J. A. LANG, N. LANG, JR., M. E. NOWLIN, G. A. PEREIRA, R. L. SIMMONS, N. W. SMITH, FRANK SMITH and W. R. STEWART,

Respondents.

PETITION FOR WRIT OF CERTIORARI

The North Shore Corporation, a corporation organized and existing under the laws of the State of Florida, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit in the above case, entered June 9, 1944, petition for rehearing upon which was denied July 11, 1944, 143 F. (2d) ..... A certified transcript of the record in the case, including the proceedings and opinion in that court, is filed herewith, together with ten copies of the record as printed below.

STATEMENT OF THE MATTER INVOLVED

(a) History of the Case.

Respondents brought suit in the United States District Court in and for the Southern District of Florida, seeking recovery from petitioner and another corporation, later

dismissed from the action, of divers amounts alleged to be due them under the Fair Labor Standards Act of 1938 (52 Stat. 1060, U. S. Code, Title 29, Sec. 201-219) for unpaid minimum wages, overtime compensation, additional equal amounts as liquidated damages, and attorneys' fees (R. 1-10).

To the complaint as originally framed, petitioner addressed a Motion to Dismiss, which was granted by the District Court. 43 F. Supp. 445. Certain of the respondents appealed, and the Circuit Court of Appeals for the Fifth Circuit affirmed. 128 F. (2d) 450. These respondents applied to this court for certiorari, which was granted. 317 U. S. 606. This court reversed the decision of the Circuit Court of Appeals and of the District Court and remanded the cause for trial. 318 U. S. 125.

On remand, the cause was tried before the District Court, without a jury (R. 72-320), being consolidated for the purpose of trial with the case of *Scott, et al,* vs. *The North Shore Corporation* (R. 72). This trial resulted in a judgment adverse to the petitioner (R. 321-335). 52 F. Supp. 503. Respondents recovered $20,949.78 and costs (R. 334). Petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit, which affirmed (R. 351 and 361). 143 F. (2d) .... Judge Sibley dissented (R. 357-361). 143 F. (2d) ...., ... Petitioner filed a petition for rehearing (R. 363-368), which was denied (R. 369). Petitioner seeks certiorari to review the last mentioned decisions of the Circuit Court of Appeals.

(b) Statement of the Case.

Upon the previous appearance of this case in this court, the matter involved was the sufficiency of the statement of the Respondents' case, contained in their complaint. The matter now involved is the sufficiency of the evidence to

support the judgment of the District Court, as affirmed by the Circuit Court of Appeals.

The relevant material facts disclosed by the record are these:—

Petitioner owned and operated a country toll road, lying wholly within Duval County, Florida, which connected with U. S. Highway No. 17, a short distance north of the city limits of Jacksonville, Florida. From that intersection, the toll road extended easterly a distance of about seventeen miles, generally paralleling the north shore of the St. Johns River, to a point near the western shore of Fort George Inlet, where it came to a dead end. It connected with a County Road serving only Fort George Island, a community of less than 100 persons, and afforded the only overland communication route between that community and the outside world. It crossed, among other waterways, three navigable streams: Cedar Creek, Clapboard Creek and Sisters Creek, the latter being a part of the Intracoastal Waterway. Construction of the road was completed in 1928, and it was operated as a toll road through 1943. Tolls were collected by authority of an Act of the Florida Legislature, granting a franchise therefor, upon condition that the road "be open for traffic at any and all times and maintained in a condition safe and suitable for travel. . ." The traffic over the road was light, the average weekly number of vehicles being under 130, and was more than 99% intrastate.

The trial court found that every merchant with a place of business on the road had testified and that only one had received interstate shipments of goods, and he only three; that from 1938 to 1942, inclusive, not in excess of fourteen movements of goods in interstate commerce took place over the road. Evidence as to transits over the road of cars bearing out-of-Florida licenses was termed by the court

"extremely unsatisfactory", except for a short period immediately preceding the trial, during which the "overwhelming majority" of the motor vehicles traversing the road bore Florida licenses. The Court's ultimate holding was based upon this finding:

> "However, it is clear from the evidence in the case that the toll road was at all times open to interstate traffic of every kind and character on the same terms as intrastate traffic moved over the road. It appears from the evidence . . . that the interstate use of the road was neither occasional nor accidental. The evidence establishes and . . . defendant admits that the toll road is used in interstate commerce. The court makes no specific finding that such use was 'substantial', nor does the court make any finding that such use was extensive as the court has held that jurisdiction does not depend upon such use."

More specifically, as to the interstate transits of individuals over the road: The evidence established in pre-war years fewer than 102 transits annually to the two "exclusive" social clubs on Fort George Island and not more than 29 transits annually of fishermen to the fishing camps scattered along the road. Since the war began, the clubs have closed down completely, and interstate fishermen have virtually discontinued their sport outside their own waters. The only additional evidence as to the commerce over the road is embodied in the finding that the United States mail is delivered and collected once a day six days a week over the full length of the road.

As to their duties, the respondents fell into two groups: one group repaired and maintained the surface of the toll road and the decking of the bridges, which were a part of the road; the other group consisted of those engaged in collecting tolls from vehicles traversing the toll road.

No question exists upon the record as to the amount of the award in favor of the several respondents, if the ultimate determination be that they are entitled to payment under the Fair Labor Standards Act.

Mentioned in the record, both in the Trial Court's opinion and in that of the Circuit Court of Appeals, is a telephone line, on which the respondents worked. In the judgment, recovery is had up to and inclusive of June 3, 1943. As in the case of the toll road, the classification of the work done on the telephone lines falls into two groups. The road repair crew occasionally, up to October 1, 1941, did some repair work on the telephone line. The toll collectors operated the telephone line as switchboard operators, making connections and putting calls through. As was pointed out by Judge Sibley, "the telephone line is a mere make-weight". The toll takers, as small switchboard operators, were excluded from the coverage of the Act under Section 13 (a) (11). If, therefore, they are entitled to recover, it is because other work done by them, namely, toll-taking, was within the coverage of the Act. Since the road maintenance crew did no work on the line subsequent to October 1, 1941, after which date all maintenance work was by others not here involved, the judgment, as to them, could not possibly be supported because of the work done on the telephone line. They, also, therefore, must be entitled to recover, if at all, on account of other work done by them which was within the coverage of the Fair Labor Standards Act. For those reasons a description of the telephone line and of the work done upon it has no proper place in a summary statement of the matter involved.

Both the Trial Court and the Circuit Court of Appeals were of the opinion that the decision of this court previously rendered in this cause, under the style *Overstreet, and others,* vs. *The North Shore Corporation,* 318 U. S. 125,

was controlling, notwithstanding the complaint there held sufficient alleged that there was "extensive" interstate commerce over the road, and that this court's opinion twice described the interstate commerce involved as being "extensive".

In the Trial Court, the defensive position of petitioner was that the interstate traffic, to which the respondents were, by this court, held to be so closely related as to be a part thereof, was not substantial within the meaning of this Court's decision in the Jacksonville Paper Co. case, infra, and, furthermore, was of so small a quantity as to be within the principle of "de minimis non curat lex".

JURISDICTIONAL STATEMENT

The jurisdiction of this court is invoked under U. S. Code, Title 28, Section 347 (a).

THE QUESTIONS PRESENTED

1. An employer owned and operated a dead end country toll road lying wholly within Duval County, Florida. No substantial amount of interstate commerce traversed the road, there having been a maximum of fourteen movements of goods in interstate commerce over the road in five years and a maximum number of interstate transits by individuals over the road in any one year of 131 persons. The total traffic over the road, in the years given, was as follows:

1940	43,424
1941	56,384
1942	41,381

The percentage of traffic represented by the interstate traffic:

1940	0.302-%
1941	0.233-%
1942	0.317-%

Were employees who maintained the road and who collected tolls from the users thereof "engaged in commerce" within the meaning of the Fair Labor Standards Act?

2. A private employer owned and operated a dead end country toll road lying wholly within Duval County, Florida. Some interstate commerce, not exceeding fourteen movements of goods, once passed over the road. Seasonally some individual interstate transits took place over the road. The average weekly total of local traffic over the road was approximately 1,000 vehicles. Under the authority "to regulate commerce among the several states", once some interstate traffic has passed over such road, and because the road must continually be open to all commerce, does Congress thereafter continuously have the power to regulate the method of operation of such road, including the fixing of minimum wages and maximum hours of employment for employees maintaining and operating the road?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

1. The Circuit Court of Appeals has decided an important question of Federal Law, which has not been, but should be, settled by this court.

When the instant case was previously submitted to this court *(Overstreet, et al,* vs. *The North Shore Corporation,* 318 U. S. 125), some of the respondents being then the petitioners, it was claimed that the important question of Federal Law which had not been, but which should be, settled by this court, was:

> "Whether the Fair Labor Standards Act extends coverage to persons employed to maintain and repair roads and highway bridges *extensively* used in interstate *transportation of passengers and freight,* to

those engaged in collecting tolls on such roads, and to those engaged in operating drawbridges over navigable streams which form part of the highway."

At this stage of the proceedings those engaged in operating drawbridges over navigable streams have been eliminated from consideration (R. 359). A substantial amount of interstate commerce flowed under the drawbridge operated by Overstreet and, in view of the language of this court in the opinion above mentioned, there remained no question but what Overstreet was "engaged in commerce" and he was therefore paid under the Act. The only categories of workers left are those who maintained and repaired the road and those who engaged in collecting tolls on the road. There was no road, when the facts were in, such as was described to this court by respondents when they were petitioners for certiorari, viz: A road "extensively used in interstate transportation of passengers and freight".

The evidence being in, it is revealed that the road was used not more than fourteen times in five years for the transportation of freight and, so far as the record reveals, never for the commercial transportation of passengers. However, a maximum of 131 annual interstate transits of sportsmen on fishing trips and of patrons or members of two "exclusive" social clubs, to attend the clubs, is established.

The important question of Federal Law which is not decided is whether persons employed to maintain and repair roads and bridges, and to collect tolls for the use thereof, are within the coverage of the Fair Labor Standards Act, where the interstate use of such roads and bridges is insubstantial and inconsequential.

This question is one of great public importance, because it affects every street, road and sidewalk in the smallest villages and hamlets throughout the Nation to the extent

that any worker on any thereof, if this decision stands, is "engaged in commerce". Not only are public highways involved, but also are involved thousands of private ways like those posted in so many New England communities. In fact, the decision is so broad as to involve any person laboring upon the walkway leading to the door of almost every citizen in the United States. Employers are entitled to know whether they must make provision to meet the financial burdens created by the Fair Labor Standards Act when the labor of their employees has to do, even in the most remote regions, with a passageway over which some movement of interstate commerce may have passed or over which some interstate transit may have taken place, even though such interstate use of the passageway may to the employer be unknown.

The public at large, whether employer or employee, whether municipality calling for bids for the repair of its public streets, or land owner employing a contractor to repair a passageway leading to his land, all, are entitled to know whether labor upon remote highways, seldom touched by interstate travel or commerce, must be compensated under and governed by the Fair Labor Standards Act.

Involved also is the question whether an employee whose labor is 1/100ths interstate, and 99/100ths intrastate is engaged in commerce within the meaning of the Fair Labor Standards Act; whether being "engaged in commerce" within the Fair Labor Standards Act means something more than a minimal of engagement therein, to-wit, whether there must be substantial engagement in commerce by an employee before the Act will be deemed applicable to him. In this connection Judge Sibley, in his dissent below, said:

> "It is perfectly clear that both the toll-takers, who dealt directly with the traffic on the road, and the maintenance men who did not, but whose work was so near

that traffic as to be practically a part of it, were engaged principally in intrastate commerce, with a small admixture of interstate commerce. Is that admixture, not exactly determined or determinable, sufficient to make these men 'engaged in interstate commerce' under the Act? No one contends that an employee must be *wholly* so engaged. No one hitherto has contended that a very slight admixture of interstate commerce will suffice. The Act itself, in Section 13, 29 U. S. C. A. 213, excluded certain employments, as agriculture, catching fish, seamen, switchboard operators in a small telephone exchange, but did not say what proportion of the employee's time and effort must be given to the excluded activity to effect an exclusion. In only one case was attention given to a possible mixed employment, in excluding 'any employee engaged in any retail or service establishment *the greater part* of whose service and selling is in intrastate commerce'. Section 13(a)(2). *Preponderance* is here made the test as between service in interstate and in intrastate commerce. It is a logical and reasonable test, and would afford a fair test in all mixed employments. This court, however, in *Fleming, Admr.* vs. *Jacksonville Paper Co.*, 128 Fed. (2) 395, suggested that if 'a substantial part' of the employee's mixed work was in interstate commerce it was enough. That language was repeated by the Supreme Court on review of the case, 317 U. S. 564. That may be said to be the judicial formula. After the decision of *Kirschbaum Co.* vs. *Walling*, 316 U. S. 517, which applied the Act to the maintenance employees of the owner of a building whose tenant was using it wholly for the production of goods for commerce, the Administrator was confronted with the case of a building only partly used for such production. He applied the judicial formula of 'substantial part', and by a rule published Oct. 17, 1942, directed that 20% should be considered substantial. When he had a case of mixed employment by trolley and bus carriers, exempt under Sect. 13(a)(9), he on March

6, 1944, applied the same ratio of 20%. We therefore have the legislative suggestion of preponderance, the judicial formula of substantial part, and the administrative crystallization of 20% to choose between. But no choice need be made, because the fact-findings are that the admixture of interstate commerce done was not 'extensive', nor even 'substantial', and certainly nowhere near 20%. The district judge called it a 'flow', but the evidence shows it to be a mere trickle, and (except for the mail) seasonal and intermittent. None is proved with certainty."

The answer to the foregoing question should be authoritatively given, there being now a conflict in the applicable decisions of the Circuit Courts of Appeal, even in the decisions of the Circuit Court of Appeals for the Fifth Circuit itself. In the case at bar a very slight admixture of interstate commerce has been held sufficient to make workers "engaged in commerce" under the Act, whereas in *Fleming* vs. *Jacksonville Paper Co.*, 128 F. (2d) 395 it was held that a substantial part of his mixed work had to be in commerce before there could be coverage.

2. The Circuit Court of Appeals has decided a Federal question in a way probably in conflict of applicable decisions of this court.

The decision of the case at bar is probably in conflict with the holdings of this Court in *Walling* vs. *Jacksonville Paper Co.*, 317 U. S. 564 and *Overstreet* vs. *The North Shore Corporation*, 318 U. S. 125. In the Jacksonville Paper Co. case, concerning mixed employment wherein the employee worked both on interstate and intrastate commerce, this Court held:

"If a substantial part of an employee's activities related to goods whose movements in the channels of

> interstate commerce was established . . . he is covered by the Act."

In the Overstreet case this Court held:

> "The allegations of petitioners' complaint satisfy this practical test. The road and bridge allegedly afford passage to an extensive movement of goods and persons between Florida and other states . . ."

It is now determined by the Circuit Court of Appeals for the Fifth Circuit that:

> "We do not find, however, that the Court rested its holding upon the alleged extensive use; we think a careful reading of the opinion justifies the view that the holding is based upon the *fact* of interstate use rather than upon the extent of such use." (Italics ours)

This holding is described by Judge Sibley in the following language:

> "The theory advanced is that because the road was open for general commerce it became an 'instrumentality of interstate commerce' so soon as any interstate commerce was done and continued to be such so long as it was kept open, so that everyone employed about it was at all times 'engaged in interstate commerce'."

If the mere fact, that interstate use is once made of a commercial facility or instrumentality, brings about a situation in law under which everyone thereafter employed about it is 'engaged in interstate commerce', that doctrine should be authoritatively announced by this Court and not left in its present state of uncertainty.

Furthermore the decision of the case at bar is in conflict with the administrative determination that the standard of coverage is determined by the single work-week and that a workman, by reason of the character of his duties,

may be within the coverage of the Act one week, and not the next. Although the Act regulates weekly hours and weekly wages, indicating a belief on the part of Congress that they were dealing with employees whose permanent occupation was in interstate commerce, it fails to specify the amount of commerce in which an employee must be engaged in order to be covered, except in connection with the exemption wherein, as Judge Sibley points out, the words "greater part" are used. This is a question which will come up again and again in the administration of the Act and must ultimately be decided by the Supreme Court, if it has not done so in the Jacksonville Paper Co. case.

It follows from the opinion below and from the record that there might be weeks during which not a single movement of goods in commerce nor a single interstate transit took place over the road and, therefore, in such weeks there was no interstate commerce of which the employees could have been a part by virtue of the nature of their duties. Yet note the language of Judge Sibley (R. 360-361):

> "For not one of the work-weeks for which each (toll taker) claims and is awarded overtime pay and penalties is it proven that he in fact handled a single car travelling interstate, yet his right depends absolutely on his proving for each work-week that he was engaged in interstate commerce. All one can spell out of the evidence is that he might have been in some of the weeks so engaged to a slight extent. It seems to me that his recovery has no certain basis other than that he *saw* the postman pass by every day." (Bracket and Italics ours)

The emphasis on the word "saw" results from the fact that the toll taker collected no toll from the postman, who passed over the road toll free.

Closely related to the single work-week standard and

tacitly approving thereof are this Court's decision in *Walling* vs. *A. H. Belo Corp.*, 316 U. S. 624 and *Overnight Co.* vs. *Missel*, 316 U. S. 572.

WHEREFORE petitioner prays that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit commanding that Court to certify and send to this Court, on a day to be designated, a full and complete transcript of record and proceedings in said Circuit Court of Appeals had in this cause to the end that this cause may be reviewed and determined by this Court; that the Judgment of the Circuit Court of Appeals be reversed and that Petitioner be granted such other and further relief as may seem proper.

W. Gregory Smith,
910 Bisbee Building,
Jacksonville, Florida,
Attorney for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

As hereinbefore pointed out this case has previously been before this Court on the sufficiency of the pleadings. We here refer to all previous decisions in the case. The first opinion of the District Court, on the pleadings, is reported at 43 F. Supp. 445. The first opinion of the Circuit Court of Appeals, also on the pleadings, is reported at 128 F. (2d) 450. The previous decision of this Court in this case, on the pleadings, is reported at 318 U. S. 125. The opinion of the District Court, on the merits, here sought to be reviewed, is reported at 52 F. Supp. 503 (R. 321-335). The opinion of the Circuit Court of Appeals for the Fifth Circuit, on the merits, is reported at 143 F. (2d) .... (R. 351-361).

JURISDICTION

The judgment of the Circuit Court of Appeals now sought to be reviewed was entered June 9, 1944 (R. 361) and on July 11, 1944 the Court denied Petition for Rehearing, without opinion (R. 369). The jurisdiction of this Court is invoked under U. S. Code, Title 28, Section 347 (a).

STATEMENT OF THE CASE

The history of the litigation and a condensed statement of the facts is set forth in the petition to which this brief is annexed. That statement is here amplified by way of giving some calculations intended to demonstrate the paucity of interstate commerce of which the work of the employees herein is a part, because so closely related thereto, as heretofore determined in this cause by this Court.

It is claimed by the respondents that the use of the toll road by four classifications of commerce brings them within the coverage of the Fair Labor Standards Act, and makes them "engaged in commerce", because they are, in law, to be considered a part thereof. Those four classifications are:

1. Movement of goods in commerce over the road.
2. Transits of persons to the "exclusive" clubs on Fort George Island.
3. Transits of patrons of the fishing camps.
4. Transits of the mail carrier operating the star route from Jacksonville to Fort George Island.

These will be discussed in order:

1. Movement of goods in commerce over the road: The Court has made a specific finding of fact covering this type of use:

> ". . . the total of all such movements was not in excess of 14 in the period from 1938 to 1942, inclusive." (R. 327)

2. Transits of persons to the "exclusive" clubs on Fort George Island: The District Court made a specific finding which fixes a maximum in this connection. In the record (R. 326) is found a tabulation containing all the evidence, giving the *total* out-of-Florida patronage at the "exclusive" clubs as follows:

Ft. George Club	1938-1939	45
	1939-1940	42
	1940-1941	59
	1941-1942	14
	1942-1943	9
Ribault Club	1941-1942	88

In this connection it is important to realize that all tabulations made by Petitioner give respondents the benefit of

each of these attendances as being a separate transit of an individual over the road, interstate in character, whereas at the same record reference it affirmatively appears that many patrons of the clubs came to them over the Inland Waterway by yacht. The record will bear out the statement that the respondents are not entitled to the benefit so given them and that the number of interstate transits over the road to the clubs is fewer than those herein calculated.

3. Transits of patrons of the fishing camps: As to these transits the District Court made no specific finding, but they can be dug out of the record. Every person renting rooms or cabins to fishermen in the area served by the toll road testified and the following maximum annual transits were thereby established:—Mrs. Chapman, 3 (R. 246); Mr. McKenna, 15 to 20 (R. 149); Mrs. Pender, 1 (R. 232); Mrs. Penland, 2 (R. 248); Mr. Overall, 3 (R. 259). Taking Mr. McKenna's maximum this gives a total of 29.

4. Transits of the mail carrier operating the star route from Jacksonville to Fort George Island: It appears from the record that the carrier of the United States mail delivers and collects letter mail and parcels to and from persons residing along the road each day, except Sunday, traversing the road once in each direction each such day. The majority opinion in the Circuit Court of Appeals does not even mention the mail carrier. The dissenting opinion points out that this was not interstate commerce in the constitutional sense, but the exercise of a governmental function under the postoffice and postroads clause of the Constitution and that there is no proof that any of the mail was interstate in fact, though counsel said some probably was (R. 359 and 92).

If the mail is to be excluded from consideration in determining coverage in this case, as it is respectfully submitted

that it should be, we have the following results for the years given:

Year	Total Traffic	Interstate Traffic	Percentage of Interstate Traffic
1940	43,423	131	0.302-%
1941	56,384	131	0.233-%
1942	41,381	131	0.317-%

In the foregoing tabulation it is to be emphasized, by repetition, that the total of 131 transits gives the respondents the advantage of every maximum figure—using 102 as the number of transits to the exclusive clubs and 20 as the number of transits to McKenna's Camp.

If the transits of the mail are calculated as interstate transits, we have the following results:

Year	Total Traffic	Interstate Traffic	Percentage of Interstate Traffic
1940	43,423	444	1.023-%
1941	56,384	444	0.788-%
1942	41,381	444	1.073-%

The figures above are arrived at by the addition of 313 transits of the mail each year to the generous figure of 131 contained in the preceding tabulation.

Both tabulations are based upon an averaging of the traffic over the whole year, although the traffic was in fact seasonal, the fishermen coming at one season and the club members at another.

The above figures mean these things (using the highest figures, including the passage of the mails):

(a) Volume of traffic: Over the period of three years, the average weekly traffic over the road was a fraction of

a car less than 130 motor vehicles. On this basis, including passages of the mail carrier there were 8.8 interstate transits per week. Since the toll collectors did not handle the transits of the mail carrier, there were 2.5 interstate transits per week, which were handled by them, to which they were "so closely related as to be a part thereof".

(b) Value of traffic: As shown by the document in evidence at R. 317, the average revenue per transit over the road was 54c. In calculating the value of the interstate traffic passing over the road, the respondents are not entitled to consideration of the trips of the postman, because he passed toll free (R. 29). Figured on this basis the daily value of the interstate traffic, giving the respondents the benefit of all doubts, would be 19.4c.

(c) Density of traffic—individuals: These figures are calculated on a twenty-four hour a day basis, it being observed from the record that the toll houses were operated twenty-four hours a day. The transits in (a) above being round trips, they have been multiplied by 2 to discover the hourly lapse of time between the interstate cars passing separate spots on the road, i.e., any given toll house. Including the postman's two daily passages, the interstate transits were 9 hours 48 minutes apart. Excluding the postman's passages, the interstate transits were 33 hours 30 minutes apart.

(d) Density of traffic—commerce in goods: Fourteen movements of goods passed over the road in five years. This would amount to 2-4/5ths movements of goods per year, or one movement less frequently than every four months.

(e) Time of employees consumed by interstate traffic: There is no way of arriving at a computation of this time in the case of the road maintenance crew whose activities were of a typical and inextricably mixed character. How-

ever, in an average work-week, the toll collectors would handle less than three interstate transits of individuals. Assuming that each individual moved in a separate car and had to stop at a toll house and pay toll (an extremely unlikely assumption since the majority travelled by club station wagon), allowing five minutes to each car (an overgenerous allowance), the toll takers would spend fifteen minutes "in commerce" each week.

In addition to the foregoing types of transits over the toll road there was a cleavage between witnesses for the Petitioner, on the one hand, and for the respondents, on the other hand, over the question what percentage of the motor vehicles travelling over the toll road bore out-of-Florida licenses. Petitioner's witnesses testified that from 5% to 8% of the cars bore such licenses; respondents' witnesses placed the percentage at from 20% to 33 1/3% (R. 353). The Trial Court found, with specific reference to this particular question that the "evidence . . . is extremely unsatisfactory" (R. 327). The Trial Court denied plaintiff's Motion to Strike out all evidence concerning foreign license traffic over the highway as distinguished from interstate traffic, which motion was on the ground that the mere fact that a car bearing an out-of-Florida license may have proceeded over the road was no evidence that that car was engaged in interstate commerce (R. 74-75).

SPECIFICATION OF ERRORS

The Petitioner specifies that it relies upon the following errors for a reversal of the judgment, to review which certiorari is sought:

1. The Court erred in affirming the action of the Trial Court, which overruled and denied respondent's Motion

to Strike out the evidence concerning the passage over the toll road of cars bearing out-of-Florida licenses.

2. The Court erred in affirming the action of the Trial Court in granting judgment for the respondents upon the complaint and evidence before it.

ARGUMENT

The questions presented by the Petition for Writ of Certiorari herein break down into the statement of the following propositions:

1. Employees engaged in the operation and maintenance of a toll road, over which there was no substantial amount of interstate commerce, could not, by virtue of such employment, be "engaged in commerce" within the meaning of the Fair Labor Standards Act.

2. Employees engaged in the operation and maintenance of a toll road over which interstate commerce moved, having a daily traffic value of less than twenty cents, the handling of which consumed less than fifteen minutes per week time of the employees, are "engaged in commerce" to an inconsequential extent and such engagement is within the doctrine *de minimis non curat lex,* so that such employees could not, by virtue of such employment, be "engaged in commerce" within the meaning of the Fair Labor Standards Act.

3. Congress is without power under the constitutional authority "to regulate commerce among the several states", solely because once some interstate traffic passed over a road and the State law required that it "be open for traffic at any and all times", to regulate the method of operation, including the fixing of minimum wages and maximum hours of employment for maintenance and oper-

ational employees, of a dead end country toll road lying wholly within one county of a State.

This cause should be determined under either the first or the second question above presented, as a matter of statutory construction. However, the doctrine announced by the Circuit Court of Appeals goes so far afield as to place upon the Fair Labor Standards Act a construction which, if correct, would seem to render the Act unconstitutional as being an attempted exercise of power, beyond the regulation of commerce between the states, invading a matter of purely local concern and which should be left to the local authorities.

The above propositions will be discussed seriatim.

1. Employees engaged in the operation and maintenance of a toll road, over which there was no substantial amount of interstate commerce, could not, by virtue of such employment, be "engaged in commerce" within the meaning of the Fair Labor Standards Act.

It has been determined by this Court in this cause that the employees engaged in the maintenance and operation of the toll road here involved are "so intimately related to (the) interstate commerce (passing over the road) 'as to be in practice and in legal contemplation a part of it' (Pedersen's case. . . .)". *Overstreet* vs. *North Shore Corp.*, 318 U. S. 125, 130. There is no intention nor desire, at this time, to attempt to disturb this holding, which has become the law of the case and the law of the land and, in the matter of statutory construction involved, the employees must be considered to have been a part of such interstate commerce as did flow over the toll road. Was that commerce enough, that they must be held, on the facts established in evidence, to have been "engaged in commerce"? This question could not have arisen in the Pedersen case

because the volume of traffic never came up and could not have come up in the Employer's Liability cases, for the reason that all the railroads in the country, as this Court undoubtedly judicially knows, handle a substantial amount of interstate commerce, whether they be short lines or trunk lines (see *Walling* vs. *Rockton & Rion RR.*, infra).

In the decision of the Overstreet case, at 318 U. S. 127, it was said:

> "It (the toll road) is used extensively by persons and vehicles travelling between the Island and points outside Florida in interstate commerce." (Bracket ours)

This was said by way of summary of the allegations of the complaint as amended, "taken as true for purposes of the motion to dismiss".

In the text of the opinion it was said (318 U. S. 130):

> "The allegations of petitioners' complaint satisfy this practical test (applied under the Federal Employer's Liability Act). The road and bridge allegedly afford passage to an extensive movement of goods and persons between Florida and other states . . ." (Bracket ours)

According to the Petition for Certiorari (p. 5) filed in the Overstreet case by some of the respondents here, as petitioners in their case, the important question presented and necessary to be determined by this Court was:

> "Does not the protection of the Fair Labor Standards Act of 1938 extend to the following classes of employees of a corporation operating a toll road *extensively used as a highway for conveyance of passengers and goods* in interstate commerce?" (Italics ours)

In the statement of "reasons relied upon for allowance of writ" in the same petition (p. 6) appears the following:

> ". . . the case turns upon an important question of federal law . . . :
>
> "Whether the Fair Labor Standards Act extends coverage to persons employed to maintain and repair roads and highway bridges *extensively used in the interstate transportation of passengers and freight . . .*" (Italics ours)

In their brief in the previous case (p. 3) respondents, as petitioners, summarized their complaint as alleging:

> "The road is *extensively* used by vehicular traffic from points outside Florida to points on the toll road and beyond, and vice versa, and is an integral part of the highway system of the United States." (Italics ours)

The Administrator of the Wage and Hour Division filed a brief on the merits in the previous case in which, on page 4, he summarized the allegations of the complaint, using the following language:

> "The toll road . . . is used *extensively* by persons and vehicles travelling between the island and points outside Florida in interstate commerce." (Italics ours)

In the brief of the petitioner, who was respondent in the previous case, on the merits, (pages 2 and 3) appears the following:

> "In accepting the facts stated in the complaint with respect to the amount of interstate as distinguished from intrastate traffic passing over the road, we reserve the right to dispute those facts in the event that a trial in this case on the merits should be necessary, and also to argue that the amount of interstate traffic over the road comes within the *de minimis* principle or in any event is less than 20% of the entire traffic."

We think it reasonably plain that, if an *extensive* amount of interstate commerce passed over this toll road, it could

be regarded as an *essential* instrumentality of commerce. By the same token, if the interstate traffic over it is virtually nil, there is no possible argument which could be made to establish the toll road as "essential."

At page 4 of the supplemental memorandum filed by the Administrator of the Wage and Hour Division on the merits on the previous appearance of this case in this court, it was contended that the following language in Interpretative Bulletin No. 5 issued in November, 1939, by the Wage and Hour Division, constituted a "contemporaneous construction of (the) statute" entitled to "judicial affirmation":

> "Employees of contractors engaged in maintaining, repairing or reconstructing . . . highways, bridges or other essential instrumentalities of interstate . . . commerce would seem to be engaged in interstate commerce and subject to the Act. . . ."

In this Court's opinion (318 U. S. 129), the foregoing interpretative language was referred to in a footnote, indicating the persuasive effect thereof on this court.

In view of all the foregoing, it appears that this case was decided previously on the theory that there was an "extensive" movement of interstate commerce over the toll road, and that the toll road was an "essential" instrumentality of commerce.

The facts being in, the case before the Court is a far cry from that thought to have been before the Court on the previous appearance of the case.

Of the fourteen movements of goods in commerce, ten were movements of horses from Georgia to a dude ranch on Dames Point which moved over the toll road from Toll House No. 1 to Toll House No. 2, but which could have reached Dames Point by County Road, as is revealed by the map of the road which was in evidence and which is

transmitted to this court separately. For convenience, a map is appended* hereto which will reveal the route which could have been followed in moving these horses. The facts in this regard appear in the record at page 94, et seq. It will be noted that the witness "shipped six or eight" horses and "carried one horse", a total not of nine trips, but "from eight to ten". The number has been counted as ten. The other four movements in five years are made up of "two or three shipments of novelties from Chicago" to Rainbow Camp or Camp Overall, (counted as three rather than as two in the determination that there were fourteen movements of goods over the road) as established at R. 260, and "on one occasion . . . the . . . Brown Company had to have a cutter built . . . and it was built in Georgia . . . and brought down here on a truck; a cutter head for a dredge" (R. 135). It will be realized that the cutter head could have reached the dredge by boat. The only movements, therefore, of goods for which the toll road could have been "essential" were the "two or three" shipments of novelties to the Rainbow Camp over a period of five years.

Of the supposed conveyance of passengers or passage of persons interstate, over the toll road the evidence established the maximum of 131 individual transits in the best year, as hereinabove shown (pp. 16-18).

If the passage of the mails, toll free as it was (R. 29) is sufficient to bring the employees within the coverage of the Act, then, indeed, much has been established. The mails reach every most distant point. They come directly to many a farm house, crossing small bridges and traversing private lanes leading thereto en route. Does the farm hand who maintains the lane and bridge thereby "engage in commerce"? Hardly an office building in the land is with-

*Appendix A.

out its mail carrier who rides its elevators and traverses its halls, swept daily by the building maintenance crew. Do the charwomen and elevator operators thereby "engage in commerce"? The postman walks up many a citizen's walkway from sidewalk or street to his door. Does the yard man who trims the grass away from the walk, thereby facilitating the postman's passage, or the cement worker who patches a broken section of concrete in the walk thereby "engage in commerce"? Examples could be multiplied ad infinitum. The trouble is that, if coverage is to be based upon the passage of the mails, too much seems to have been proven and a minimum result must be the reversal of the office building cases in numerous of which certiorari has been denied. To name several:

Johnson vs. *Dallas Downtown Development Co.*, 132 F. (2d) 287; certiorari denied; 318 U. S. 790;

Johnson vs. *Masonic Building Co.*, 138 F. (2d) 817; certiorari denied, ... U. S. .... (Feb. 28, 1944);

Rucker vs. *First National Bank of Miami, Oklahoma*, 138 F. (2d) 699; certiorari denied, ... U. S. .... (Jan. 31, 1944);

Convey vs. *Omaha National Bank*, 140 F. (2d) 640, certiorari denied, ... U. S. .... (Mar. 6, 1944).

There are other cases unnecessary to be cited.

To supplement the foregoing there is nothing other than the "extremely unsatisfactory" evidence concerning passage of cars with out-of-Florida licenses over the toll road and the evidence concerning the passage of the postman.

As pointed out above (pp. 20-21) these interstate movements could not consume fifteen minutes time per week of

the toll takers, represented an income to petitioner not worth mentioning and, in short, draws a good picture of an interstate will-o-the-wisp. There is nothing substantial about it; it hardly reaches a quantity which would be entitled to the appellation *de minimis,* and, contrarywise, is ephemeral to the nth degree. Yet it is upon this interstate traffic, and by reason of it, and upon the holding that the duties of the employees, who do not actually come in contact with or in any way participate in the traffic, are so closely related thereto as "in legal contemplation" as to be a part thereof, that coverage has been found to exist in this case.

In addition to what this court held in this case when it was previously here, viz: that there is coverage where there is an extensive amount of interstate commerce involved; this court has also dealt with the quantity of commerce necessary to be involved for there to be coverage under the Act, within the term "engaged in commerce", in *Walling* vs. *Jacksonville Paper Co.,* 317 U. S. 564, where it was said:

> "The fact that all of respondent's business is not shown to have an interstate character is not important. The applicability of the Act is dependent upon the character of the employees' work. *A. B. Kirshbaum Co.* vs. *Walling,* supra. If a substantial part of an employee's activities related to goods whose movement in the channels in interstate commerce was established by the test we have described, he is covered by the Act. Here as in other situations *(A. B. Kirshbaum Co.* vs. *Walling,* supra) the question of the Act's coverage depends upon the special facts pertaining to the particular business."

While in the case at bar neither the District Court nor the majority of the Circuit Court of Appeals thought that it mattered whether or not the employees' activities related to a substantial amount of interstate commerce, neither the Administrator nor other courts, since the above holding in

the Jacksonville Paper Co. case, have been of the same opinion.

The Administrator, on November 19, 1943, with respect to maintenance employees in buildings in which less than 20% of the space was occupied by firms engaged there or elsewhere in the production of goods for commerce, determined that he would take no further enforcement action under the Wage and Hour Provisions of the Act.[1]

Concerning the application of the exemption of employees of local trolley and bus carriers (Act—Sec. 13 (a) (9)), where such employees were also engaged in other non-exempt interstate activities, the administrator held that if the employee engaged in non-exempt work for more than 20% of the number of hours he worked during a work-week, he would not be exempt.[2]

The Courts, in the following, and in many other cases, have looked to the amount of commerce in which the employees were engaged or to which their duties related to see whether the amount thereof was substantial:

Walling vs. *Mutual Wholesale Food & Supply Co.*, 141 F. (2d) 331;
Schwarz vs. *Witwer Grocer Co.*, 141 F. (2d) 341;
Walling vs. *Rockton & Rion R. R.*, 54 F. Supp. 342;
Fellabaum vs. *Swift & Co.*, 54 F. Supp. 353;
Rouch vs. *Continental Oil Co.*, 55 F. Supp. 315;
Hinkle vs. *Frank Nelson Building Inc.*, ... Ala. ...., 18 So. (2d) 374;

The case last mentioned is direct support for every point made by the petitioner in the presentation of its case.

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[1]PR 19 (Rev.) Wage and Hour Division Release. (See Appendix C)
[2]Administrator's Opinion of March 6, 1944. (See Appendix C)

Based upon the foregoing argument it is respectfully submitted that the correct rule for the determination of coverage under the Act is that, for an employee to be "engaged in commerce" within the meaning of the Fair Labor Standards Act, it must appear that in any given work-week his duties related to a substantial amount of such commerce.

Pointed up by the presentation of this matter, as well as by the record, is the fact that the application of the decision of the Court below will entirely ignore the construction of the Act and its application to employees by work-weeks, that is to say, the fact that it is applicable both in the minimum wage and maximum hour provisions according as to whether or not the employee is engaged in commerce during a given week. Under the decision below, though no interstate traffic may pass over the road in many weeks, yet if some commerce passed over the road at some time, thereafter, continuously, as long as the road remained open for any commerce which might come along, every employee working thereon was deemed engaged in commerce. This we submit is a perversion of the whole theory of the Act.

(a) Implicit also in the decision below, both in the District and Circuit Court of Appeals, is the theory that evidence that a car bearing a license from another state passes over a Florida road is evidence of interstate commerce over the Florida road. This ruling of the District Court was assigned as error on the appeal to the Circuit Court of Appeals (R. 338-339) and is assigned as error here (page 20 above). Judge Sibley, in his dissenting opinion, said:

> "That a car bore a foreign plate does not . . . prove that it was on an interstate trip over this road . . ." (R. 358-359).

Apart from this reference to the matter the particular point has received no attention whatever, although petitioner

conceives that, if the decision of the Trial Court should be affirmed, it is solely because of the receipt of this evidence concerning the passage over the road of cars bearing out-of-Florida licenses.

2. Employees engaged in the operation and maintenance of a toll road over which interstate commerce moved, having a daily traffic value of less than twenty cents, the handling of which consumed less than fifteen minutes per week time of the employees, are "engaged in commerce" to an inconsequential extent and such engagement is within the doctrine de minimis non curat lex, so that such employees are not "engaged in commerce" within the meaning of the Fair Labor Standards Act.

In the discussion of this point little need be added to what has been said under point 1 above.

We refer the court to *Goldberg* vs. *Worman,* 37 F. Supp. 778, and to *Tucker* vs. *Hitchcock,* 44 F. Supp. 874, which cases apply the doctrine in two different manners. We also refer the Court to the case of *McKeown* vs. *Southern California Freight Forwarders,* 52 F. Supp. 331 where the above, and other, cases are discussed. In the latter case the court held that a man whose employment was concerned and connected with interstate commerce to the extent of seven per cent of his total activities during each and every day of each and every week was entitled to the benefits of the Act. It does not necessarily follow that because only seven per cent of one's time is concerned with interstate commerce that his work in connection therewith is not substantial. In the case at bar, our percentages are much smaller and we point out only that the California judge who wrote the McKeown opinion seemed doubtful of the application of the law to the particular plaintiff whose case he was considering. We submit to the court that where only less than one minute out of each hour of a man's labor is devoted to or connected

with interstate commerce that it is not reasonable to hold that he is engaged in such commerce. There would be nothing "practical" about a decision which held that such a man was "engaged in" interstate commerce.

This Court has apparently recognized the doctrine *de minimis* in *National Labor Relations Board* vs. *Fainblatt*, 306 U. S. 601, 606. This Court also, in the Jacksonville Paper Co. case, supra, has said:

> "It is clear that the purpose of the Act was to extend Federal control in this field throughout the farthest reaches of the channels of interstate commerce."

This statement was repeated in the Overstreet case, supra. But also this Court, in the Jacksonville Paper Co. case, supra, said:

> "In this connection we cannot be unmindful that Congress in enacting this statute plainly indicated its purpose to leave local business to the protection of the States . . . Moreover as we stated in *Kirshbaum Co.* vs. *Walling*, supra, 522-523, Congress did not exercise in this Act the full scope of the commerce power."

Also this Court has said in the Kirshbaum Co. case that what is needed in the construction of this Act is a "common sense accommodation of judgment to kaleidoscopic situations." And further this Court has indicated its desire for the application of "practical" tests.

We believe and submit that a practical common sense deduction drawn from these statements is that they do not mean that every man is brought under the Wage and Hour Law at the moment of his contact with a single interstate shipment or movement. We believe it reasonably plain that Congress in the Act, and the Courts in construing the Act, sought to reach and protect those individuals and relationships who and which in a practical sense engaged in inter-

state commerce and not those whose part in interstate commerce was most trivial.

3. Congress is without power under the constitutional authority "to regulate commerce among the several states", solely because once some interstate traffic passed over a road and the State law required that it "be open for traffic at any and all times", to regulate the method of operation, including the fixing of minimum wages and maximum hours of employment for maintenance and operational employees, of a dead end country toll road lying wholly within one county of a State.

We do not here question the power of Congress to enact the Fair Labor Standards Act in the form in which it appears on the Statute Books. Until the opinion of the Circuit Court of Appeals in this case was rendered, petitioner did not conceive of the case as presenting or involving a constitutional problem. Upon rendition of the judgment, however, it appears that the Circuit Court of Appeals is of the view that because the toll road was open for general commerce, so soon as any interstate commerce passed over it, it became an instrumentality of interstate commerce, and continued to be such so long as it was kept open. This holding appears to be based upon the fact of interstate use, rather than upon the extent and continuity thereof. This conclusion appears to be arrived at by a construction of the Overstreet opinion which petitioner believes to be unjustified. Neither in the Overstreet case, nor in the Pedersen case[5], which this court followed in its opinion in this case, was the fact of continuity of use ignored. In this case the court relied upon the allegation of the complaint that the road carried an "exten-

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[5]*Pedersen* vs. *Del. Lack. & W. RR.* 229 U. S. 146.

sive" amount of interstate commerce—a word which certainly implies continuity of use by such commerce—and in the Pedersen case, the Court's holding shows that when the track or bridge *was used* in interstate commerce it was an instrumentality of commerce.

So construed, we deem the holding of the Court below to be that, whenever any movement of interstate commerce proceeds over any road, street, lane or walkway, thereafter, for so long as such road, street, lane or walkway remains open, anyone working thereon is "engaged in commerce", irrespective of the importance of the one movement and irrespective of whether there ever are any other movements of interstate commerce over the "instrumentality".

We need not deal with ancient and discarded phrases, used by the members of this Court of other days in differentiating between what was local and left to the states on the one hand, and that which affected interstate commerce and was therefore of National concern on the other hand, but consideration should be given to what has been said about such matters in decisions written by present members of this court.

Mr. Justice Frankfurter wrote on the subject and considered it in connection with the construction of the Federal Trade Commission Act in *Federal Trade Commission* vs. *Bunte Bros.*, 312 U. S. 349, where the Court's decision recognized that the construction of the Federal Trade Commission Act contended for was:

> "An inroad upon local conditions and local standards of such far-reaching import (that it) ought to await a clearer mandate from Congress." (Bracket ours)

The matter was touched upon from its constitutional angle in *Wickard* vs. *Filburn*, 317 U. S. 111 (opinion by Mr.

Justice Jackson), and in *A. B. Kirshbaum Co.* vs. *Walling,* 316 U. S. 517 (opinion by Mr. Justice Frankfurter).

In *Wickard* vs. *Filburn,* supra, the rule governing what might and what might not be done was brought down to date after extensive discussion, in the following extract (317 U. S. 125):

> "But even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts *a substantial economic effect on interstate commerce. . .*" (Italics ours)

In *Kirshbaum* vs. *Walling,* it was said (316 U. S. 525):

> " 'Necessary' is colored by the context not only of the terms of this legislation but of its implications in the relation between state and national authority. We cannot, in construing the word 'necessary', escape an inquiry into the relationship of the particular employees to the production of goods for commerce. If the work of the employees has only the most tenuous relation to, and is not in any fitting sense 'necessary' to, the production, it is immaterial that their activities would be substantially the same if the employees worked directly for the producers of goods for commerce."

In the Jacksonville Paper Co. case, as above pointed out, this Court expressly said of this particular Act:

> ". . . we cannot be unmindful that Congress in enacting this statute plainly indicated its purpose to leave local business to the protection of the states . . ."

From the foregoing, particularly from Judge Jackson's opinion in *Wickard* vs. *Filburn,* supra, we deduce that the field of regulation of interstate commerce is not all inclusive and does not follow one through one's front door when he returns from an interstate journey, so that the

workman repairing the door is thereby engaged in commerce in any such sense as that Congress may control the relationship between him and the home owner. The line bounding not only coverage under the Act, but power under the Constitution is drawn somewhere, and its location must be determined. The necessity for drawing it appears from the case at bar in the broad construction placed upon the Fair Labor Standards Act by the Circuit Court of Appeals.

We submit that the operation and maintenance of the toll road involved in this case has on the record no substantial economic effect upon commerce, is not, in and of itself, commerce, and is touched upon by commerce to so light an extent as that its essentially local character is not disturbed or nationalized. We submit that until a closer connection with commerce than that shown by the record is established that it is beyond the power of the Congress under the commerce clause to regulate the operation of this toll road, which regulation would be constituted by the application to the relationship between Petitioner and respondents of the Fair Labor Standards Act.

SUMMARY AND CONCLUSION

To summarize our main contention:—

In the Overstreet case the complaint alleged that the toll road constituted an "integral part of the highway system of the United States", and further that it was "used extensively by persons and vehicles travelling between the island and points outside Florida in interstate commerce." The allegations of the complaint were assumed for the purpose of the motion to dismiss. Upon the trial it developed that the road was not an integral part of the highway system of the United States but was a lightly travelled,

dead-end road leading from U. S. Route 17 to Fort George Island, and that the interstate movement of persons and vehicles over it was less than 1%. The question presented is whether the toll road company's employees (other than those engaged in the operation of the drawbridges over navigable streams) are engaged in interstate commerce.

It appears from the opinion (318 U. S. 130) that this Court rested its conclusion upon the "extensive movement of goods and persons between Florida and other states", permitting the implication that if the movement of goods and persons between Florida and other states is insignificant and casual a different result would follow.

Under the construction given by the court below any person working on a private road within the United States would come within the coverage of the Act regardless of the extent of its use in interstate commerce. The emphasis placed by this Court upon the word "extensive" indicates that the character of the commerce is determined by the degree of use. That the degree of use affords a practical test is illustrated by the fact that the Administrator determined that 20% was the critical point when an activity is or is not in interstate commerce.

On the basis of the three points made on page 21, above, and hereinabove discussed, we respectfully submit that this court should review the decision of the Circuit Court of Appeals and reverse same.

Respectfully submitted,

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Jacksonville, Florida,
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APPENDIX A

ATLANTIC OCEAN
Fort George Island
Intracoastal Waterway
Sister's Cr.
Clapboard Cr.
Brown's Cr.
St. John's River
San Carlos C.
Dunn's Cr.
NEW BERLIN
DAMES POINT RD.
EASTPORT
Cedar Cr. or Broward River
AIR PORT
HECKSCHER DRIVE
River
MAIN ST.
JACKSONVILLE
MAYPORT
Intracoastal Wa
HECKSCHER DRIVE
DUVAL COUNTY, FLORIDA

APPENDIX B

Excerpts from Fair Labor Standards Act of 1938, 52 Stat. 1060, U. S. Code, Title 29, Secs. 201-219.

Sec. 3. As used in this Act—

. . . . .

(b) "Commerce" means trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof.

. . . . .

Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

. . . . .

Sec. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 13 (a) The provisions of sections 6 and 7 shall not apply with respect to

. . . . .

(9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or

. . . . .

(11) any switchboard operator employed in a public telephone exchange which has less than five hundred stations. (Paragraph (11) added by Act of August 9, 1939, Pub. No. 344, 76th Congress.)

APPENDIX C

Excerpts from Interpretative Bulletins and Releases Under the Fair Labor Standards Act of the United States Department of Labor, Wage and Hour Division.

Excerpts from Interpretative Bulletin No. 3:

"3. The 40-hour standard in Section 7 (a) is a limitation upon the number of hours that may be worked *in any workweek* free of time and one-half overtime compensation. A workweek consists of seven consecutive days. It need not coincide with the calendar week but may begin on any day and at any time of any day. The beginning of the workweek may be changed if the change is intended to be permanent and not to evade the overtime requirements of the Act."

. . . . .

"5. The Act takes a single workweek as its standard and permits no averaging of hours over two or more weeks . . ."

Excerpts from Interpretative Bulletin No. 5:

"9. . . . .

". . . . . there is no justification for determining the applicability of the Act to a particular employee on the basis of the percentage of the goods he produces . . . which move in interstate commerce. However, this does not necessarily mean that an employee who at some particular time may engage in work which brings him within the coverage of the act is, by reason of that fact, thereafter indefinitely entitled to the benefits of the statute. In determining the applicability of the act, the workweek is to be taken as the standard. Thus, if in any workweek an employee produces goods for commerce and also produces goods for local con-

sumption or performs work otherwise outside the coverage of the act, the employee is entitled to both the wage and hour benefits of the act for all the time worked during that week. The proportion of the employee's time spent in each type of work is not material.* An employee spending any part of a workweek producing goods for commerce will be considered on exactly the same basis as an employee engaged exclusively in producing goods for commerce during the workweek and the total number of hours which the employee works during the workweek at both types of work must be compensated for in accordance with the minimum wage and maximum hour standards of the act.

"It is thus recognized that an employee may be subject to the act one week and not the next. It is likewise true that some employees of an employer may be subject to the act and others not. . . ."

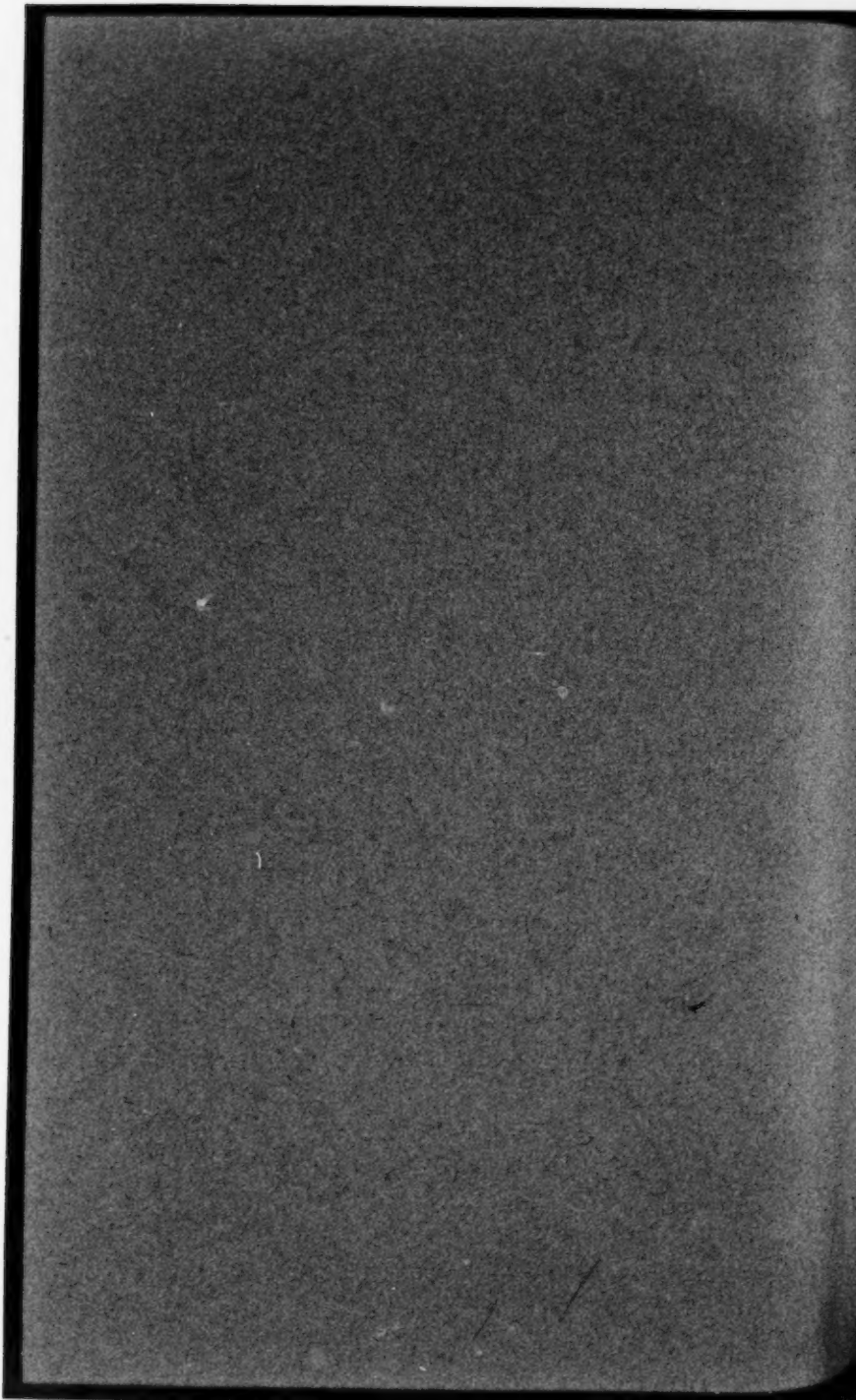
Excerpt from PR 19, issued November 19, 1943:

". . . he (the Administrator) would take no further enforcement action under the wage and hour provisions of the Fair Labor Standards Act, with respect to maintenance employees in buildings in which less than 20 per cent of the space is occupied by firms engaged there or elsewhere in the production of goods for commerce. He also stated that, in the interests of simplicity and uniformity in the application of this policy, for the present he would not include in the computation of the 20 percent banking firms or other firms whose interstate activities are limited to the preparation and transmission of documents, communications or correspondence, although in his opinion such activities involve production of goods for commerce as defined in the Fair Labor Standards Act and of course involve engaging in commerce." (Bracket ours)

*But see additional quotations, infra this appendix.

Excerpt from Administrator's Opinion of March 6, 1944:

"The Administrator pointed out that there are certain firms or individuals who engage in transportation which falls within the criteria outlined above and are likewise engaged in other activities which are not of an exempt nature. In such situations the exemption is applicable to those employees who are exclusively engaged in the type of work which was intended to be exempt, i.e., transportation by the means described in the exemption or activities so closely related to those described in the exemption as to be actually a part thereof. However, where a particular employee performs exempt and non-exempt work, it is the Administrator's opinion that such an employee who is engaged in work of a non-exempt nature for more than 20 percent of the number of hours he works during a workweek would not be exempt for that workweek under Section 13(a) (9). In those cases where the portion of time an employee spends in non-exempt work cannot be definitely ascertained, the exemption likewise is inapplicable. The 20 percent test adopted by the Administrator is in accord with similar tests prescribed in other regulations issued by the Division, which tests have generally been accepted by the courts."



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Supreme Court of the United States

OCTOBER TERM 1944

NO. 345

THE NORTH SHORE CORPORATION,

Petitioner,

versus

ISADORE BARNETT, et al.,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE GRANTING OF WRIT OF CERTIORARI [1]

I. HISTORY OF THE CASE

Petitioner's statement (pet. 1, 2) is accepted as correct as far as it goes. However, it will be helpful to point out the changes made in parties to this proceeding since the case first came before this Court, and why they were made. Due to the desire of both parties to shorten the record, record references are not available for the facts stated in the three paragraphs next succeeding, but these facts clearly

[1] As the petition for certiorari and supporting brief are filed as one document with pages consecutively numbered, reference to either the petition or brief will be indicated as "(pet.....)". Emphasis in quoted matter is supplied unless the contrary is indicated. In the District Court petitioner was defendant and respondents were plaintiffs; they will be thus referred to in this brief wherever convenient.

appear in the record of the District Court, and they will not be disputed by petitioner.

One of the plaintiffs in the suit as originally brought in the District Court was H. T. Overstreet, who for a stated period was bridge tender of the bridge crossing Sister's Creek, a part of petitioner's toll road. His only claim related to services as bridge tender. He was one of the three petitioners when the case first came to the attention of this Court (**Overstreet v. North Shore Corp.**, 317 U. S. 606; 318 U. S. 125).

Another of the plaintiffs was M. E. Nowlin. Nowlin sued in two capacities: first as bridge tender on Sister's Creek bridge, in succession to Overstreet; and second as toll collector. After the decision of this Court when the case was first presented here (318 U. S. 125), defendant, recognizing that there was no escape from the holding of this Court that the two bridge tenders were engaged in commerce, settled with Overstreet in full, and with Nowlin for his services as bridge tender (pet. 8). Based on this fact, it is petitioner's present contention that the bridge over Sister's Creek is definitely eliminated as a factor in determining whether plaintiffs were "engaged in commerce." Respondents disagree, and their position on this point will be developed below (infra, p 3).

In the case as originally brought, Bayshore Water & Light Company, a subsidiary of petitioner, was its co-defendant. Upon remand of the case to the District Court for trial it developed that all of the wages of petitioners who rendered services to Bayshore's telephone line were actually paid by The North Shore Corporation (R. 328). Accordingly, in the second amended complaint upon which the case was tried (R. 1), Bayshore was omitted as a party defendant.

II. STATEMENT OF THE CASE

Under this caption we shall deal with the facts relating to the flow of commerce over the road and telephone line. Reference will be made as needed to the two separate statements of fact made by petitioner, the first in the petition itself (pp. 2-6), the second in its brief (pp. 15-20).

Petitioner's description of the location of the toll road (p. 3) may be accepted as correct, and the road is correctly indicated on the map reproduced as Appendix "A" to the petition (following p. 37).

The proofs show the following with reference to the road and telephone line as instrumentalities of interstate commerce:

(1) Commerce moving on the intracoastal canal spanned by the drawbridge over Sister's Creek. Petitioner admits that at all times involved in this suit a substantial amount of interstate commerce passed under the Sister's Creek drawbridge, which was constantly raised and lowered to permit its passage, but seeks to exclude it from consideration, because the claims of Overstreet and Nowlin, the only two bridge tenders who were plaintiffs, have been settled in full (pet. 8).

That is entirely beside the mark. The drawbridge is an integral part of the road itself, as this Court recognized when the case first came before it for consideration (**Overstreet case,** 318 U. S. 125,130). As there stated, the road could not be operated without the drawbridge, and the bridge was necessary to the movement of commerce passing along the canal. The drawbridge still remains as a necessary instrumentality of commerce. It could not be maintained or operated as such were it not for the continuing services of the other plaintiffs—the toll collectors whose labors provided money for maintenance of the bridge, and

the maintenance crew who repaired the bridge (ibid, 130). This condition still prevails, notwithstanding the fact that there is no drawbrdge tender who is now a party plaintiff.

(2) The regular transportation of mails. Petitioner concedes (p. 4) that the mail carrier collects and delivers U. S. mail regularly over the road once a day six days a week, serving Fort George Island (population 1940, 98, plus seasonally the members and guests of the two clubs on the Island), Dame's Point and New Berlin township (population 1940, 584) (R. 327, 328). The Court will take judicial notice of the fact that mail sent to and by these communities must necessarily include a substantial number of communications to and from states other than Florida.

(3) Telephone and telegraph messages. Plaintiff Booth, maintenance foreman, and his crew, plaintiffs Lang, Barnett, Brazle, Lang, Jr., and Harris, maintained until June 3, 1941 the telephone line owned by Bayshore Water & Light, among their other duties. The remaining plaintiffs were toll collectors who as part of their duties, transmitted and received telephone and telegraph messages. All such services were paid for by the defendant (R. 328-330) up to March 31, 1942.

Neither plaintiffs nor defendant found it possible to obtain anything approaching complete figures on this traffic, but the District Court found that throughout the period there was a flow of interstate messages "sufficiently constant to be neither occasional nor accidental" (R. 329).

(4) The travel of out-of-state members and guests to and from the clubs on Fort George Island. Available figures on this subject are tabulated in the District Judge's findings (R. 326), and they are undisputed (pet. 16).

(5) Miscellaneous travel over the road by motor. Figures are available compiled from the toll keepers' daily rec-

ords, showing the total volume of motor traffic over the road for the years 1940, 1941, 1942, (R. 64, 65) viz:

1940—43,424
1941—56,384
1942—41,381.

These figures petitioner correctly states (pp. 6, 18) but the tabulation made on p. 18 for "interstate traffic" for those years, both including and excluding the transportation of mail by the mail carriers, are wholly misleading, being based solely on the traffic to and from the clubs and fishing camps, plus (in the second tabulation) the trips of the mail carriers. Petitioner omits entirely to take into account the steady flow of traffic by passenger cars travelling interstate over the road for purposes of recreation, sight-seeing, etc. This same error is found in the percentage computation included in petitioner's "Questions Presented" (p. 6).

Except for a very short period during the year 1943 immediately preceding the trial (R. 327) there are no records as to the numbers of cars bearing foreign licenses traversing the road. We readily concede that not every car bearing a foreign license tag must be assumed to be travelling in interstate commerce, but ordinary human experience amply warrants the conclusion that a considerable number of such cars are engaged in making interstate journeys, particularly as here where the road is located so close to the Georgia state line, and leads immediately off of U. S. Highway No. 17, a main artery of travel from Florida to New York and other eastern points. Several of the toll collectors testified that in some instances they could tell from the questions asked at the toll gate that the cars were travelling interstate (e. g. Pereira, R. 89, 90). Another factor to be considered in this connection, is that petitioner made a practice of advertising the attractions of

the road by pamphlets placed with the Jacksonville Tourist Bureau (R. 234, 235).

Considering all of these factors, the trial judge permitted witnesses for the plaintiffs and defendant to give their estimates based on personal observation as to the percentage of cars bearing foreign license tags traversing the road since the enactment of the Fair Labor Standards Act in 1938. As might be expected, there was a wide discrepancy between the testimony of plaintiffs' witnesses and that of defendant's witnesses, the former estimating the percentage of cars bearing foreign licenses at from 20% to 33 1/3% of the total, while defendant's witnesses estimated at from 5% to 8% (R. 353).

The trial judge found the evidence on this point "extremely unsatisfactory" (R. 327), but undoubtedly a substantial proportion of such cars were travelling interstate. If for the sake of argument the 8% maximum suggested by defendant's witnesses (pet. 20) be used as the basis for computing the number of foreign licenses, then the number of such cars for the three years 1940-1942 inclusive would run to well over 11,000; and if only 25% of the foreign licenses represented interstate journeys, the number of such journeys for the three year period would run to nearly 3000. A fortiori, if the lowest estimate of plaintiff's witnesses (20%) be accepted as showing the number of foreign licenses, then the total number of foreign licenses for the three year period exceeds 28,000, and 25% of that would exceed 7000. The effect of this is to destroy completely the value of Question 1 (pet. 6) and of the tabulation found on p. 18 of the petition.

III. THE QUESTIONS PRESENTED

We think petitioner's "The Questions Presented" (pp. 6, 7) should be entirely restated in the light of the history of the case and the facts showing the commerce on the road. Petitioner's first question is bad because it incorrectly states the percentage of traffic that is interstate. The second question is bad because the question of congressional power to make the regulation is frivolous.

As we see it, there are in this case two questions of law and one of fact.

Question 1: Is this case one which calls for a **second exercise by this Court** of its discretionary power to issue writs of certiorari? If this question is answered in the negative, as we believe it will be, there is no need to go farther.

Question 2: If, contrary to our expectation, the court is in doubt as to Question 1, there arises the second question: How much interstate traffic is shown by direct proof or fair inference to flow over petitioner's toll road? And

Question 3: Is that volume of interstate traffic legally sufficient to show that respondents, plaintiffs below, were "engaged in commerce" within the meaning of the Fair Labor Standards Act?

IV. ARGUMENT

A. There is No Reason why this Court Should Exercise for the Second Time in this Case its Discretionary Right of Review by Certiorari.

As shown by petitioner's "HISTORY OF THE CASE" (pet. 1, 2), this case has already been before this Court on certiorari as **Overstreet** v. **North Shore Corp.**, 318 U. S. 125, granted on petition of plaintiffs below, respondents now.

Not only does that fact present no reason why the writ should not a second time be granted; it offers the best of reasons why the present application should be denied—that this Court's decision in 318 U. S. 125 settled every point that is important from the standpoint of the **public interest**, leaving for determination under writ of certiorari only **a private controversy** between the parties litigant.

Certiorari was granted on the petition of the present respondents because of "the important question raised as to the coverage of the Act", (318 U. S. 127). Now, what was decided in the first opinion?

(1) That the phrase "engaged in commerce" as used in the Act stands unaffected by "the policy of congressional abnegation with respect to occupations affecting commerce"; that is to say, that the refusal of Congress to cover employees whose activities merely **affected** the "production of goods for commerce" is no reason for limiting the definition of those **"engaged in commerce"**; that in determining what constitutes "commerce" or "engaged in commerce", the Court is guided by "practical considerations" (318 U. S. 128).

(2) That the phrase "engaged in commerce" as used in the Fair Labor Standards Act is **in pari materia** with the like phrase used in the Federal Employers' Liability Act,

and is governed by the case of **Pedersen -v- Del. L. & W. R. Co.**, 229 U. S. 146, in which it was held that an employee injured while carrying bolts to be used in repairing a railroad bridge over which interstate trains passed, was "engaged in commerce" because

> ". . . the work of keeping such instrumentalities in a proper state of repair while thus used is so closely related to such commerce as to be in practice and legal contemplation a part of it." (Citing numerous cases) (318 U. S. 129) (2)

(3) "Vehicular roads and bridges are as indispensable to interstate movement of persons and goods as railroad tracks and bridges are to interstate transportation by rail." (318 U. S. 129).

(4) "Without the services of Brazle (a maintenance repair employee) the facilities would fall into disrepair, and both the operation and maintenance would seem to depend upon Garvin's (a toll collector) collecting the tolls from the users of the structures. The work of each petitioner in providing a means of interstate transportation and communication is so intimately related to interstate commerce 'as to be in practice and legal contemplation a part of it' (**Pedersen's** case, supra), and justifies regarding petitioners as 'engaged in commerce' within the meaning of the Fair Labor Standards Act." (318 U. S. 130).

(5) It is the nature of the employees' activities, not the employer's, which governs coverage under the Act, and cases such as **Henderson Bridge Co. v. Kentucky**, 166 U. S. 150, and **Detroit International Bridge Co. -v- Corp. Tax Appeal Bd.**, 294 U. S. 83, dealing with the status of bridge

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(2) As pointed out by **L. Hand, J.**, in **Miller -v- Central R. of N. J.**, 58 F. (2d) 635, 637, the doctrine of the **Pedersen** case has never been modified by the many later cases which have sought to refine the definition of "engaged in commerce" as used in the federal Employers' Liability Act.

companies with respect to payment of state franchise taxes, upon which the complaint was dismissed by the lower courts, are without application. (318 U. S. 131, 132).

These are the essential points upon which the Court reversed the two lower courts, and held that the complaint stated a cause of action, and they covered every feature of the case which is of consequence to the public at large, or to the Administrator of the Wage and Hour Division of the Department of Labor.

Petitioner has no additional point to offer except the question whether the quantum of interstate commerce moving over defendant's road and telephone facilities is sufficient to classify respondents as "engaged in commerce", to which question it devotes, in varying form, the major portion of its brief (pet. 22-33).

The answer to that is that this Court, when the case first came before it, did not decide that **the volume** of interstate commerce was material, but only **the fact of its existence.**

> "The **precise question** is whether petitioners who are engaged in maintaining or operating a toll road and a drawbridge over a navigable waterway which together constitute a medium for the interstate movement of goods and persons are 'engaged in commerce' within the meaning of Secs. 6 and 7 of the Act." (318 U. S. 126).

Nowhere does this Court condition its opinion upon the volume of interstate commerce passing over the road, any more than did the **Pedersen** case, supra, and the numerous cases which follow it condition coverage under the Employers' Liability Act by the amount of interstate commerce passing over the railroad facilities served. As stated by

the Circuit Court in the instant case, in this very connection (R. 353, 354):

> "We do not find, however, that the court rested its holding upon the alleged **extensive** use; we think a careful reading of the opinion justifies the view that the holding is based upon the fact of interstate use rather than upon the extent of such use."

Following this excerpt, the Circuit Court pointed out (R. 354, note 4) that in **McLeod -v- Threlkeld**, 319 U. S. 491, where this Court cited its opinion in the **Overstreet** case, the majority and the minority of the Court were in harmony in interpreting the decision in the **Overstreet** case as made without reference to the quantum of interstate commerce.

In Rule 38 (5) this Court has indicated by illustration the "special and important reasons" for granting the writ of certiorari. None of these reasons fits the case which petitioner now presents, and while it is conceded that the Court has not limited its discretion by the promulgation of the rule, yet the rule does cover the overwhelming majority of all cases in which the writ has been granted.

At page 11 petitioner suggests that there is "a conflict in the applicable decisions of the Circuit Court of Appeals, even in the decisions of the Circuit Court of Appeals for the Fifth Circuit." No basis for that statement is shown in the brief or exists in fact. It can only be inferred that petitioner makes the statement on the basis of cases decided under the "production of goods for commerce" classification. Such decisions are without application to coverage under the "engaged in commerce" clause, as pointed out by this Court when this case first came up (318 U. S. 128).

In view of the thoroughness with which this Court covered the questions before it on the earlier petition for certiorari, there remain for consideration only three questions advanced by the present petition:

(1) Whether the statute, if construed as it was construed by the District and Circuit Courts in this case, would be unconstitutional (pet. 33-36). Under Point "C" of this brief this question will be shown to be entirely lacking in substance.

(2) Whether the decision of the Circuit Court of Appeals in this case is "probably in conflict with applicable decisions of this Court" (pet. 11-14). Here petitioner relies upon **Walling** -v- **Jacksonville Paper Co.**, 317 U. S. 564, 572, which held that if a "substantial part" of an employee's activities related to goods moving in interstate commerce, he is covered by the Act.

The inapplicability of the **Jacksonville Paper** case is fully demonstrated in the opinion of the Circuit Court (R. 354-355), where it is pointed out that the law as laid down in the **Jacksonville Paper** case is applicable to cases dealing with employees whose duties relate in part to interstate shipments, and not to those having to do with maintenance or operation of instrumentalities of commerce. The Circuit Court then goes on to say (R. 354-355):

> "Employees in the first class engaged during the same work-week in activities strictly interstate in character and in activities strictly intrastate in character. Employees in the second class of cases, as here, engaged in the same type of activities throughout each work-week. In the case before us the appellees are not concerned with goods or persons moving between two or more states by means of instrumentalities of interstate and intrastate transportation. They are concerned (1) in maintaining an instrumentality of transportation over which goods and persons in interstate and intrastate movements alike are being transported, and (2) in maintaining and operating an instrumentality of communication over which messages and telegrams in interstate and intrastate transactions alike are being transmitted.

> 'A track or bridge may be used in both interstate and intrastate commerce, but when it is so used it is none the less an instrumentality of the former; nor does its double use prevent the employment of those who are engaged in its repair or in keeping it in suitable condition for use from being in interstate commerce' **Pedersen** -v- **Delaware, Lack. & West. R. R. Co.,** 229 U. S. 152."

(3) Whether the interstate commerce moving over the road is so small as to fall under the doctrine of "de minimis" (pet. 7-11; 22-33).

From a factual standpoint this question has been fully dealt with in our "STATEMENT OF THE CASE", supra, where it is shown that there was a regular movement of motor traffic over the road throughout the period involved. Legal aspects of the question are dealt with under Point "B" immediately following this section of our brief.

Here it is enough to note that the determination of the volume of interstate commerce moving over the road cannot be accomplished without weighing the evidence adduced before the District Judge, who in this case acted as both judge and jury (R. 72). That evidence, insofar as it concerns miscellaneous travel in interstate commerce of cars bearing foreign licenses, is conflicting. Certiorari will not be granted to review disputed questions of evidence. **U. S. -v- Johnston,** 268 U. S. 220, 227.

The right to issue writs of certiorari is to be sparingly exercised, in the public interest only, and not where only matters of private interest are involved.

Forsyth -v- **Hammond,** 166 U. S. 506, 514.
Re: Lau Ow Bew, 141 U. S. 583, 387.
American Cons. Co. -v- **Jacksonville T. & K. W. R. Co.** 148 U. S. 372, 383.

The record of certiorari granted and denied since the Act of 1925 is ample proof of the fact that the policy of the court has not changed since the 1925 amendment was enacted.

The case at bar certainly presents no reason for granting the writ.

B: The Volume of Interstate Commerce over Petitioner's Road is Ample to Warrant the Classification of Respondents as within the Coverage of the Act.

The basic facts as to interstate commerce passing over petitioner's toll road have been fully developed under the caption "STATEMENT OF THE CASE", supra. We deal here with certain conclusions which petitioner attempts to draw from those facts.

(1) Petitioner contends (pp. 8, 9) that if the Circuit Court's decision stands it would bring under the Act all those employed in maintenance of streets, roads and sidewalks in every village and hamlet in the nation, and "thousands of private ways" as well. This sweeping result is merely a spectre summoned by petitioner's pessimistic imagination.

Insofar as such persons are employed by public bodies, they are excluded from coverage by the definition of the word "employer" in the Act (U. S. C. Tit. 29, Sec. 203 (d)) as pointed out in Mr. Justice Murphy's opinion (318 U. S. 130). If privately employed, their connection with interstate commerce is remote, and may be excluded under **McLeod -v- Threlkeld**, supra.

(2) At page 23 it is urged that cases involving roads are to be differentiated from railroad cases such as the **Pedersen** case, supra, because:

> " . . . all the railroads in the country, as this Court undoubtedly judicially knows, handle a substantial amount of interstate commerce, whether they be short lines or trunk lines."

This is disposed of by the holding in the **Overstreet** case (318 U. S. 129), placing roads and bridges on a complete parity with railroads, as respects interstate commerce.

(3) Petitioner urges strongly that the transit of the mails should be disregarded as an element of interstate commerce moving over the road, for two reasons:

(a) Because, with reference to the mails, Congress is acting under the constitutional power "to establish post offices and post roads", and not under the commerce power. This is answered by the definition of "commerce" in U. S. C. Tit. 29, Sec. 203(b), so as to include "communication among the several states". Under petitioner's theory, a shipment of war munitions from a factory in Detroit to a port of embarkation would not be subject to the regulations of the Interstate Commerce Commission because the goods were ordered and shipped under the war power of Congress.

(b) Petitioner further objects that if the carriage of the mails over the road be viewed as interstate commerce, it follows that laborers working on a path in a yard leading to a house over which the postman walks, are also within the coverage of the Act (pet. 27). This contention is but one more illustration of the fact that almost any proposition can be made ludicrous by applying it in an extreme and foolish way. There is a vast difference between the use of a toll road required by statute to be kept open for transit

at all times, and the use of a path across the private lot of a householder which is subject to no such legal obligation.

Two other decisions of this Court dealing with the Fair Labor Standards Act as applied to employees engaged in transportation merit attention; **Pickett** -v- **Union Terminal Co.**, 33 F. Supp. 244, 118 F.(2d) 328, U. S. 386; and **Overnight Motor Trans. Co.** -v- **Missel**, 316 U. S. 572.

In the Pickett case the District Court held squarely that redcaps employed in a union station to handle the hand baggage of passengers, were "engaged in commerce" and the reversal of the District Court by the Circuit Court was entirely upon other grounds. The **Pickett** case was decided in this Court as a companion case to **Williams** -v- **Jacksonville Terminal Co.**, 315 U. S. 386, and this Court did not disturb the District Court's ruling on the question of coverage.

In the **Overnight** case, supra, coverage was granted to a rate clerk employed by a company engaged in motor transportation, the decision being cited with approval in **McLeod** -v- **Threlkeld**, supra, (319 U. S. 497, foot note 14). Coverage was recognized in the case of the redcaps and of the rate clerk wholly without regard to the proportion of interstate business to the entire traffic of the carriers involved, or to what proportion of the duties of the employees involved interstate passengers or freight.

Many of petitioner's cases are decisions of district courts, among which conflict and confusion as to coverage have reigned rampant throughout the effective period of the Fair Labor Standards Act. They do not deal with "transportation" or "communication" as defined in the Act, but with "production of goods for commerce". Detailed analysis of such cases therefore would be unprofitable.

Considering both the law and the facts, the District Judge was ultra-conservative in finding as he did (R. 327,

329) that the interstate use of the road was neither occasional nor accidental. He might well have found that a substantial amount of interstate commerce moved over the road.

C. To Hold Plaintiffs Covered under the Fair Labor Standards Act Does not Invalidate the Statute.

The contention that if plaintiffs are covered the Act is unconstitutional has never been advanced before. Now it is urged as an eleventh-hour defense at pages 33-36.

It is factually unsound, because petitioner's argument is predicated upon a lack of continuity in the use of the road as an instrumentality of commerce. No such situation arises here, since, for all the purposes enumerated in our "STATEMENT OF THE CASE", supra, the use of the road was continuous.

And further, the argument is entirely unsound because, with regard to all of the federal acts dealing with interstate commerce, this Court has recognized the paramount power of Congress to protect interstate commerce regardless of the quantum. Instances may be multiplied at will, but it is enough, we think, to cite the upholding by this Court of the Fair Labor Standards Act (**United States -v- Darby**, 312 U. S. 100); of the National Labor Relations Act (**Nat. Labor Rel. Bd. -v- Jones & Laughlin S. Corp.**, 301 U. S. 1); of the power of the Interstate Commerce Commission to regulate railroad rates in intrastate commerce, as declared in the Minnesota and Wisconsin Rate Cases.

CONCLUSION

In the light of the foregoing we urge that the present application for certiorari is in the last analysis merely the attempt of an unsuccessful litigant to persuade this Court to review the tedious details of testimony in which the District Judge sat as both judge and jury, and found upon the evidence, in part conflicting, that plaintiffs had proved sufficient facts to show coverage under the Act.

The time of this Court is answerable to calls more important in the public interest, and need not be spent in considering matters of this kind. The petition should be denied.

Respectfully submitted,

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No. 345. NORTH SHORE CORP. *v.* BARNETT ET AL.; and

No. 346. NORTH SHORE CORP. *v.* SCOTT ET AL. Certiorari, *post*, p. 691, to the Circuit Court of Appeals for the Fifth Circuit. December 11, 1944. *Per Curiam:* The judgments of the Circuit Court of Appeals are vacated, the judgments of the District Court are modified in accordance with the stipulations signed by counsel for the parties and the cases are remanded to the District Court for the Southern District of Florida with directions to enter judgments as modified. *Mr. W. Gregory Smith* for petitioner. *Mr. Lucien H. Boggs* for respondents in No. 345. Reported below: 143 F. 2d 172, 595.